

time and from time to time, in whole or in part, but such amendment will not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and will not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan, or the Secretary has issued a firm commitment. In addition, such amendment will not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

[62 FR 30226, June 2, 1997]

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) *Commissioner* means the Federal Housing Commissioner or his authorized representative.

(b) *Act* means the National Housing Act, as amended.

(c) *FHA* means the Federal Housing Administration.

(d) *Mortgage* is defined at § 203.17(a)(1).

(e) *Mortgagor* means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) *Mortgagee* means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g)–(h) [Reserved]

(i) *Insured mortgage* means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument for insurance by the Commissioner.

(j) *Contract of Insurance* means the agreement evidenced by the issuance of

a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and the applicable provisions of the Act.

(k) *MIP* means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l)–(m) [Reserved]

(n) *Open-end advance* means an insured advance made by an approved mortgagee in connection with a previously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) *Open-end insurance charge* means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) *Beginning of amortization* means the date one month prior to the date of the first monthly payment to principal and interest.

(q) *Maturity* means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) *Debentures* means registered, transferable securities in certificated or book entry form which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(t) *TOTAL* is an acronym that stands for “Technology Open to Approved Lenders.” TOTAL is a mortgage scorecard based on a mathematical equation that is to be used within an automated underwriting system (AUS). TOTAL is a tool to assist the mortgagee in managing its workflow and expediting the endorsement process, and is not a substitute for the mortgagee’s reasonable consideration of risk and credit worthiness. Direct Endorsement mortgagees

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using TOTAL remain solely responsible for the underwriting decision.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 8661, Apr. 29, 1972; 41 FR 49734, Nov. 10, 1976; 49 FR 12697, Mar. 30, 1984; 53 FR 34282, Sept. 6, 1988; 59 FR 49815, Sept. 30, 1994; 61 FR 36265, July 9, 1996; 68 FR 65826, Nov. 21, 2003]

ENDORSEMENT AND CONTRACT OF INSURANCE

§ 203.255 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, or under the Lender Insurance program under § 203.6, the Secretary will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment, or will electronically acknowledge that the mortgage has been insured.

(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5, the mortgagee shall submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Secretary (including, if required, any additional documentation supporting the appraised value of the property under § 203.37a), or a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage in a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stat-

ing that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporates each of the underwriter certification items that apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees, except that where the TOTAL Mortgage Scorecard is used by the mortgagee, and the TOTAL Mortgage Scorecard has determined that the application represents an acceptable risk under terms and conditions agreed to by the FHA, a Direct Endorsement underwriter shall not be required to certify that the underwriter has personally reviewed the credit application (including the analysis performed on any worksheets). The following requirements are also applicable to the use of the TOTAL Mortgage Scorecard:

(i) Mortgagees and vendors must certify to compliance with these requirements:

(A) *Permissible users.* Only automatic underwriting systems (AUSs) developed, operated, owned, or used by FHA-approved Direct Endorsement mortgagees, Fannie Mae, or Freddie Mac, may access TOTAL, and only FHA-approved mortgagees will be able to obtain risk-assessments using TOTAL;

(B) *Limitation on use.* Results from TOTAL must not be used as the basis for rejecting any mortgage applicant. Mortgagees must provide full manual underwriting for mortgage applicants when TOTAL returns a “refer” risk score.

(C) *Vendor and mortgagee requirements.* Both mortgagees and vendors must:

(1) Use TOTAL to process FHA and other loan products specified by the FHA Commissioner only and for no other purpose;

(2) Implement quality control procedures for TOTAL usage and provide, at FHA’s request, reports and loan samples that enable FHA to evaluate program operation;

(3) Not use TOTAL to direct mortgagees into other non-FHA product offerings (this requirement does not relieve a mortgagee from its obligations under

§203.10 concerning informed consumer choice for prospective FHA mortgagors);

(4) Not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in TOTAL;

(5) Not provide feedback messages that conflict with the Equal Credit Opportunity Act; and

(6) Comply with any additional HUD/FHA requirements or procedures that are applicable to the Scorecard and may be issued through handbooks, mortgagee letters, TOTAL User Guides, or TOTAL Developers Guide following appropriate advance notification, where applicable.

(ii) *Loss of privilege to use TOTAL.* Mortgagees and AUS vendors found to violate the requirements applicable to the use of TOTAL may have their access to TOTAL and all associated privileges terminated upon appropriate notice in accordance with the following procedure:

(A) *Notice.* HUD will provide a mortgagee or vendor with a 30-day notice of a violation and loss of privilege. The notice will state the nature of the violation, the effective date of the loss of the privilege, and the duration of the loss of the privilege. The notice will become effective on the date provided in the notice, unless the mortgagee or vendor appeals the violation and loss of privilege in accordance with paragraph (b)(5)(ii)(B) of this section.

(B) *Appeal.* A party receiving a notice of violation may appeal to the Deputy Assistant Secretary for Single Family Housing (DAS-SFH), or his or her designee, before the effective date of the notice by providing evidence to refute the violation. The loss of privilege is stayed until the DAS-SFH, or designee, notifies the party that the loss of privilege has been affirmed, rescinded, or modified.

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the appropriate local gov-

ernment official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with §200.926d(f) of this chapter;

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgage certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of paragraph (b) of this section. The certification shall incorporate each of the mortgagee certification items that apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(12) For a Home Equity Conversion Mortgage under part 206 of this chapter, the additional documents required by §206.15 of this chapter; and

(13) The documentation required under §203.37a providing that:

(i) The seller is the owner of record; and

(ii) That more than 90 days elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance.

(14) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine that:

(1) The mortgage is executed on a form which meets the requirements of the Secretary;

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(2) The mortgage maturity meets the requirements of the applicable program;

(3) The stated mortgage amount does not exceed the maximum mortgage amount for the area as most recently announced by the Secretary, except for mortgages under 24 CFR part 206;

(4) All documents required by paragraph (b) of this section are submitted;

(5) All necessary certifications are made in accordance with paragraph (b) of this section;

(6) There is no mortgage insurance premium, late charge or interest due to the Secretary; and

(7) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing whether the mortgage shows an acceptable payment history.

In addition, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may re-

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view all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to §203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Lender insurance—(1)Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under §203.6, the mortgagee is responsible for performing a pre-insurance review that would otherwise be performed by HUD under §203.255(c) on the documents that would otherwise be submitted to HUD under §203.255(b). The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(g) *Indemnification—(1)General.* By insuring the mortgage, a Lender Insurance mortgagee agrees to indemnify HUD, in accordance with this paragraph.

(2) *Definition of origination.* For purposes of indemnification under this paragraph, the term "origination" means the process of creating a mortgage, starting with the taking of the initial application, continuing with the

processing and underwriting, and ending with the mortgagee endorsing the mortgage note for FHA insurance.

(3) *Serious and material violation.* The mortgagee shall indemnify HUD for an FHA insurance claim paid within 5 years of mortgage insurance endorsement, if the mortgagee knew or should have known of a serious and material violation of FHA origination requirements, such that the mortgage loan should not have been approved and endorsed by the mortgagee and irrespective of whether the violation caused the mortgage default. Such a serious and material violation of FHA requirements in the origination of the mortgage may occur if the mortgagee failed to, among other actions:

(i) Verify the creditworthiness, income, and/or employment of the mortgagor in accordance with FHA requirements;

(ii) Verify the assets brought by the mortgagor for payment of the required down payment and/or closing costs in accordance with FHA requirements; or

(iii) Address property deficiencies identified in the appraisal affecting the health and safety of the occupants or the structural integrity of the property in accordance with FHA requirements, or

(iv) Ensure that the appraisal of the property serving as security for the mortgage loan satisfies FHA appraisal requirements, in accordance with §203.5(e).

(4) *Fraud or misrepresentation.* The mortgagee shall indemnify HUD for an insurance claim if the mortgagee knew or should have known that fraud or misrepresentation was involved in connection with the origination of the mortgage, regardless of whether the fraud or misrepresentation caused the mortgage default and regardless of when an insurance claim is filed.

(5) *Demand for indemnification.* The demand for indemnification will be made by either the Secretary or the Mortgagee Review Board. Under indemnification, the Lender Insurance mortgagee agrees to either abstain from filing an insurance claim, or reimburse FHA if a subsequent holder of the

mortgage files an insurance claim and FHA suffers a financial loss.

[57 FR 58348, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993, as amended at 60 FR 42759, Aug. 16, 1995; 61 FR 36265, July 9, 1996; 62 FR 30227, June 2, 1997; 63 FR 29507, May 29, 1998; 68 FR 23376, May 1, 2003; 68 FR 65827, Nov. 21, 2003; 69 FR 5, Jan. 2, 2004; 77 FR 3605, Jan. 25, 2012; 77 FR 51469, Aug. 24, 2012]

§ 203.256 Insurance of open-end advance.

Insurance on an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance, the date of insurance, and the regulations under which the advance is insured.

§ 203.257 Creation of the contract.

The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgement to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

[62 FR 30227, June 2, 1997]

§ 203.258 Substitute mortgagors.

(a) *Selling mortgagor.* Except as provided in paragraph (d) of this section, the mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, only if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under §203.43h or §203.43i only if the mortgagor is to occupy the dwelling as a principal residence (as defined in §203.18(f)(1)).

(2) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part (except a mortgage referred to in paragraph (b)(1) of this section), only if the

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substitute mortgagor is to occupy the dwelling as a principal residence or as a secondary residence (as these terms are defined in §203.18(f)) or if the substitute mortgagor is an eligible non-occupant mortgagor (as defined in §203.18(f)).

(3) With respect to any mortgage covering a dwelling to be occupied as a secondary residence, the loan to value ratio may not exceed 85 percent of the greater of:

(i) The appraised value of the property at the time the mortgage is accepted for insurance; or

(ii) The appraised value of the property at the time approval of a substitute mortgagor is requested.

(c) *Applicability-current mortgages.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor only if the mortgage executed by the original mortgagor was insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after December 15, 1989;

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after December 15, 1989.

(d) *Applicability—earlier mortgages.* If the mortgage was insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after February 5, 1988, but before December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the approved underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after February 5, 1988, but before December 15, 1989, or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after February 5, 1988, but before December 15, 1989, the Commissioner may approve a substitute mortgagor with respect to

the mortgage only if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in §203.18(f)), or is an eligible non-occupant mortgagor (as defined in the following sentence), or if the mortgage has a principal balance that is not more than 75 percent of the greater of (i) the appraised value of the property at the time the mortgage is accepted for insurance, or (ii) the appraised value of the property at the time approval of a substitute mortgagor is requested. For purposes of this paragraph (d), the term *eligible non-occupant mortgagor* has the meaning given in §203.18(f), except that paragraph (d)(3)(ii)(A) and (B) of this section apply in place of §203.18(f)(3) (i) and (ii).

(A) A public entity, as provided in section 214 or 247 of the National Housing Act; and

(B) A private nonprofit or public entity, as provided in section 221(h) or 235(j) of the National Housing Act.

If neither paragraph (b) nor the preceding portion of this paragraph (d) applies, the Commissioner may approve a substitute mortgagor without regard to whether the mortgagor is to occupy the dwelling.

(e) *Direct endorsement.* Mortgagees approved for participation in the Direct Endorsement program under §203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

(f) *Definition.* As used in this section, the term *substitute mortgagor* includes:

(1) Persons who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assume this liability and agree to pay the mortgage debt; and

(2) Persons who purchase without assuming liability on the mortgage note or purchase where no release is given by the mortgagee to the previous mortgagor.

[55 FR 34806, Aug. 24, 1990, as amended at 57 FR 58349, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993; 61 FR 36453, July 10, 1996]

Office of Assistant Secretary for Housing, HUD

§ 203.264

MORTGAGE INSURANCE PREMIUMS—IN
GENERAL

§ 203.259 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures at par plus accrued interest.

[48 FR 28805, June 23, 1983]

§ 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to § 203.280 for mortgages that:

(1) Are insured pursuant to § 203.43(c) (if the mortgage to be refinanced was executed prior to July 1, 1991 and the new mortgage is executed on or after April 24, 1992); or insured pursuant to § 203.43i; or

(2)(i) Are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by § 203.270);

(ii) Are insured pursuant to: (A) An application for a conditional commitment received on or after September 1, 1983; or

(B) An application for mortgage insurance endorsement under the single family Direct Endorsement program as provided in § 203.255, where the property appraisal report is signed by the mortgagee's underwriter on or after September 1, 1983; and

(iii) Are executed before July 1, 1991.

(b) Except as provided in § 203.284(h) or § 203.285(d), the Commissioner shall charge an up-front MIP pursuant to § 203.284 or § 203.285 for mortgages executed on or after July 1, 1991 that are obligations of the Mutual Mortgage Insurance Fund. In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgages, that up-front MIP be remitted electronically.

(c) The periodic MIP provision of §§ 203.260 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section, nor shall they apply

to mortgages to which the provision of § 203.284 or § 203.285 apply.

[57 FR 15211, Apr. 24, 1992, as amended at 57 FR 46983, Oct. 14, 1992; 58 FR 12902, Mar. 8, 1993; 58 FR 41003, July 30, 1993; 59 FR 13882, Mar. 24, 1994; 60 FR 34138, June 30, 1995; 61 FR 36453, July 10, 1996]

MORTGAGE INSURANCE PREMIUMS—
PERIODIC PAYMENT

§ 203.260 Amount of mortgage insurance premium (periodic MIP).

The mortgagee shall pay to the Commissioner an initial MIP in an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the first year of amortization. After payment of the initial MIP, the mortgagee shall pay to the Commissioner an amount equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the 12-month period preceding each subsequent anniversary date of the beginning of amortization.

[48 FR 28805, June 23, 1983]

§ 203.261 Calculation of periodic MIP.

The amount of any periodic MIP shall be calculated in accordance with the original amortization provisions of the mortgage, without taking into account delinquent payments, prepayments, agreements to postpone payments, or agreements to recast the mortgage.

[48 FR 28805, June 23, 1983]

§ 203.262 Due date of periodic MIP.

The full initial and each annual MIP shall be due and payable to the Commissioner no later than the 10th day after the amortization anniversary date.

[61 FR 37801, July 19, 1996]

§ 203.264 Payment of periodic MIP.

The mortgagee shall pay each MIP in twelve equal monthly installments. Each monthly installment shall be due and payable to the Commissioner no later than the tenth day of each month, beginning in the month in which the mortgagor is required to

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make the first monthly mortgage payment. This will be effective for amortization beginning on or after September 1, 1996.

[61 FR 42787, Aug. 19, 1996]

§ 203.265 Mortgagee's late charge and interest.

(a) Periodic MIP which are received by the Commissioner after the payment dates prescribed by §§ 203.262 and 203.264 shall include a late charge of four percent of the amount paid.

(b) In addition to the late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any periodic MIP which are remitted to the Commissioner more than 20 days after the payment dates prescribed in § 203.264. Such interest rate shall be paid at a rate set in conformity with the Treasury Financial Manual.

[48 FR 28805, June 23, 1983, as amended at 61 FR 36265, July 9, 1996; 61 FR 37801, July 19, 1996]

§ 203.266 Period covered by periodic MIP.

The initial MIP shall cover the period beginning with the date of the issuance of a Mortgage Insurance Certificate and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve-month period preceding each subsequent anniversary date.

[48 FR 28805, June 23, 1983]

§ 203.267 Duration of periodic MIP.

The mortgagee shall pay the MIP to the Commissioner until the deed to the Commissioner is filed for record or the contract of insurance is terminated.

[48 FR 28805, June 23, 1983]

§ 203.268 Pro rata payment of periodic MIP.

(a) If the insurance contract is terminated before the due date of the initial MIP, the mortgagee shall pay a portion of the MIP prorated from the beginning of amortization, as defined in § 203.251, to the date of termination.

(b) If the insurance contract is terminated after the due date of the initial MIP, the mortgagee shall pay a portion of the current annual MIP prorated

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from the due date of the last annual MIP to the date of termination.

(c) A pro rata MIP shall not be due or payable where the mortgagee notifies the Commissioner that foreclosure or other action to acquire the property has been completed and that the property will not be conveyed to the Commissioner in exchange for insurance benefits. Any MIP due and paid after the institution of foreclosure or the date the property was otherwise acquired by the mortgagee will be refunded to the mortgagee upon receipt by the Commissioner of the notice from the mortgagee that the property will not be conveyed to the Commissioner.

[48 FR 28805, June 23, 1983, as amended at 61 FR 37801, July 19, 1996]

§ 203.269 Method of payment of periodic MIP.

In cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that periodic MIP be remitted electronically.

[60 FR 34138, June 30, 1995]

OPEN-END INSURANCE CHARGES—ALL MORTGAGES

§ 203.270 Open-end insurance charges.

(a) *Required charge.* In the case of an insured open-end advance the mortgagee shall pay to the Commissioner an open-end insurance charge.

(b) *Payment of charge for mortgages with periodic MIP.* The amount of any insured open-end advance shall be added to the average outstanding principal obligation of the mortgage for the purpose of determining the amount of periodic MIP as provided in §§ 203.260 through 203.268, except that the initial additional charge shall be prorated to cover the period beginning with the first day of the month following the issuance of a certificate evidencing the insurance of the open-end advance and ending on the due date of the next MIP.

(c) *Payment of charge for mortgages with one-time or up-front MIP.* In the case of a mortgage with a one-time or up-front MIP pursuant to § 203.280, § 203.284, or § 203.285 of this part, the insurance charge shall be in an amount

equal to ½ percent per annum of the outstanding principal obligation of the open-end advance. Sections 203.260 through 203.268 shall apply to the open-end charge on a mortgage with a one-time or up-front MIP, except that all references to amortization dates shall refer to amortization dates of the open-end advance, references to MIP shall refer to the open-end insurance charge, and references to outstanding principal obligation of the mortgage shall refer to outstanding principal obligation of the open-end advance.

(d) *Method of payment—all mortgages.* The payment of any open-end insurance charge under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures issued by the Mutual Mortgage Insurance Fund at par plus accrued interest.

[48 FR 28806, June 23, 1983, as amended at 56 FR 24624, May 30, 1991; 57 FR 15211, Apr. 24, 1992; 57 FR 46983, Oct. 14, 1992; 58 FR 41003, July 30, 1993]

MORTGAGE INSURANCE PREMIUMS—ONE-TIME PAYMENT

§ 203.280 One-time or Up-front MIP.

For mortgages for which a one-time or up-front MIP is to be charged in accordance with §§ 203.259a, 203.284, or 203.285, the mortgagee shall, as a condition to the endorsement of the mortgage for insurance, pay to the Commissioner for the account of the mortgagor, in a manner prescribed by the Commissioner, a premium representing the total obligation for the insuring of the mortgage by the Commissioner or the up-front portion of the total obligation, as applicable, within 10 calendar days after the date of loan closing or within 10 calendar days after the date of disbursement of the mortgage proceeds, whichever is later.

[70 FR 19669, Apr. 13, 2005]

§ 203.281 Calculation of one-time MIP.

(a) The applicable premium percentage determined under paragraph (b) of this section assumes, for purposes of calculation, that the entire amount of the one-time MIP is added to the loan amount. The amount of the one-time MIP shall be determined by multiplying the loan amount otherwise insurable under this part by the applica-

ble premium percentage, subject to adjustment for the portion of the MIP, if any, that is not to be included in the insured mortgage.

(b)(1) The Commissioner shall determine the applicable premium percentage in accordance with sound financial and actuarial practice.

(2) Application of the premium percentage determined under paragraph (b)(1) of this section shall not result in a MIP in excess of an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments.

(c) The applicable premium percentage will be published by notice at least annually in the FEDERAL REGISTER.

[48 FR 28806, June 23, 1983, as amended at 61 FR 36265, July 9, 1996]

§ 203.282 Mortgagee's late charge and interest.

(a) Payment of a one-time or up-front MIP is late if not received by HUD within 10 calendar days after the date of loan closing or within 10 calendar days after the date of disbursement of the mortgage proceeds, whichever is later. Late payments shall include a late charge of four percent of the amount of the MIP.

(b) If payment of the MIP is not received by HUD within 30 days after the date of loan closing or within 30 calendar days after the date of disbursement of the mortgage proceeds, whichever is later, the mortgagee will be charged additional late fees until payment is received at an interest rate set in conformity with the Treasury Fiscal Requirements Manual.

[70 FR 19669, Apr. 13, 2005]

§ 203.283 Refund of one-time MIP.

(a) The Commissioner shall provide for the refund to the mortgagor of a portion of the unearned MIP paid pursuant to § 203.280 if the contract of insurance covering the mortgage is terminated:

(1) By covenant to one other than the Commissioner and a claim for the insurance benefits is not presented for payment (§ 203.315),

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(2) By prepayment of the mortgage (§ 203.316), or

(3) By voluntary agreement with the approval of the Commissioner (§ 203.317).

(b) The Commissioner shall determine the amount of the premium refund by multiplying the amount the premium paid at the time the mortgage was insured by the applicable premium refund percentage for mortgages insured in the year the mortgage was endorsed for insurance. The Commissioner shall determine the applicable premium refund percentage for each year in an equitable manner and in accordance with sound financial and actuarial practice, taking into account: (1) Projected salaries and expenses, (2) prospective losses generated by insurance claims, and (3) expected future payments of premium refunds.

[48 FR 28806, June 23, 1983, as amended at 52 FR 1327, Jan. 13, 1987]

CALCULATION OF MORTGAGE INSURANCE PREMIUM ON OR AFTER JULY 1, 1991

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

Except for insured mortgages with a term of 15 or fewer years executed on or after December 26, 1992, (see § 203.285 of this part), up-front and annual MIP will be calculated in accordance with this section.

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, as well as any mortgage executed after December 27, 2005, which is insured under sections 203(k) or 234(c) of the National Housing Act (12 U.S.C. 1709(k) and 12 U.S.C. 1715y(c)) shall be subject to the following requirements:

(1) *Up-Front.* The Commissioner shall establish and collect a single premium payment in an amount not exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage.

(2) *Annual.* In addition to the premium under paragraph (a)(1) of this section, the Commissioner shall establish and collect annual premium payments in an amount not exceeding .50 percent of the remaining insured principal balance (excluding the portion of

the remaining balance attributable to the premium collected under paragraph (a)(1) of this section) for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is less than 90 percent of the appraised value of the property (as of the date of the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than or equal to 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the lesser of the mortgage term or the first 30 years of the mortgage term; except that, for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than 95 percent of the appraised value, the annual premium collected during the period determined under this clause shall be in an amount not exceeding 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section).

(b) *Transition provisions; savings provision.* Mortgages that are obligations of the Mutual Mortgage Insurance Fund and that were insured during Fiscal Years 1991-1994, are governed by 24 CFR 203.284(b) as in effect on April 1, 2003, (see 24 CFR parts 200-499 revised as of April 1, 2003).

(c) *Refunds.* With respect to any mortgage subject to premiums under this section, the Commissioner shall refund all of the unearned premium charges paid on a mortgage upon termination of insurance by voluntary agreement or upon payment in full of the principal obligation of the mortgage before the maturity date.

(d)-(e) [Reserved]

(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.269, 203.280, and 203.282 are applicable to

mortgages subject to premiums under this section.

(g) *Definition.* As used in this section the term *remaining insured principal balance* means the average outstanding principal obligation of the mortgage for the first year of amortization, or for a 12-month period preceding a subsequent anniversary date of the beginning of amortization.

(h) *Exception for streamline refinance.* This section shall not apply to any mortgage insured pursuant to § 203.43(c) if the mortgage to be refinanced was executed before July 1, 1991 and the new mortgage is executed on or after April 24, 1992. This exception does not have the effect of exempting streamline refinancing mortgages from the requirement that a one-time MIP be paid in accordance with § 203.259a(a).

[57 FR 15211, Apr. 24, 1992, as amended at 57 FR 46983, Oct. 14, 1992; 58 FR 41003, July 30, 1993; 60 FR 34138, June 30, 1995; 61 FR 36265, July 9, 1996; 61 FR 37801, July 19, 1996; 70 FR 37156, June 28, 2005]

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

(a) *Up-front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992, that is an obligation of the Mutual Mortgage Insurance Fund, and any mortgage executed on or after December 27, 2005, to be insured under sections 203(k) and 234(c) of the National Housing Act, shall be subject to a single up-front premium payment established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. Upon termination of insurance by voluntary agreement, or upon payment in full of the principal obligation of the mortgage before the maturity date, the Commissioner shall refund all of the unearned premium charges paid on the mortgage pursuant to this paragraph (a).

(b) *Annual.* In addition to the premium under paragraph (a) of this section, the Commissioner shall establish and collect annual premium payments in amounts not exceeding the following percentages of the remaining insured principal balance (excluding the por-

tion of the remaining balance attributable to the premium collected under paragraph (a) of this section) for the following periods:

(1) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), no annual premium will be charged.

(2) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than or equal to 90 percent of such value, but less than or equal to 95 percent of such value, an annual premium not exceeding .25 percent shall be collected for the first four years of the mortgage term.

(3) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than 95 percent of such value, an annual premium not exceeding .25 percent shall be collected for the first eight years of the mortgage term.

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.269, 203.280, 203.282, 203.284(c), and 203.284(g) are applicable to mortgages subject to premiums under this section.

(d) *Exception for streamline refinance.* This section shall not apply to any mortgage insured pursuant to § 203.43(c) if the mortgage to be refinanced was executed before July 1, 1991 and the new mortgage is executed on or after December 26, 1992.

[58 FR 41004, July 30, 1993, as amended at 60 FR 34138, June 30, 1995; 61 FR 37801, July 19, 1996; 70 FR 37156, June 28, 2005]

ADJUSTED MORTGAGE INSURANCE
PREMIUM

§ 203.288 Discontinuance of adjusted premium charge.

Notwithstanding any provision in the mortgage instrument, there shall be no adjusted mortgage insurance premium due the Commissioner on account of

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the prepayment of any mortgage on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

VOLUNTARY TERMINATION

§ 203.295 Voluntary termination.

Upon request by the mortgagor and mortgagee the Commissioner may terminate the insurance contract on any mortgage under this part covering a 1-to-4 family residence. The mortgagee shall cancel the insurance endorsement on the mortgage insurance certificate or note upon receipt of notice from the Commissioner that the contract of insurance is terminated. Notwithstanding any provision in a mortgage instrument, there shall be no voluntary termination charge due the Commissioner on account of the voluntary termination of any mortgage insurance contract where the request for termination is received by the Commissioner on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

TERMINATION OF INSURANCE CONTRACT

§ 203.315 Termination by conveyance to other than Commissioner.

(a) For those mortgages to which the provisions of §203.368 apply, the contract of insurance shall be terminated under the following circumstances:

(1) The mortgagee notifies the Commissioner that it will not convey title to the Commissioner and will not file a claim for the insurance benefits when:

- (i) The mortgagee either acquires the property by any means, or
- (ii) Acquires the property and gives such notice during the redemption period; or

(2) The mortgagee notifies the Commissioner that it will not file a claim for the insurance benefits when:

- (i) The property is bid in and acquired at foreclosure by a party other than the mortgagee, or
- (ii) After foreclosure of the mortgaged property by the mortgagee the property is redeemed.

(b) For those mortgages to which the provisions as set forth in §203.368 do not apply, the contract of insurance shall be terminated under the following circumstances:

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(1) The mortgagee acquires the mortgaged property but does not convey it to the Commissioner;

(2) The property is bid in and acquired at a foreclosure sale by a party other than the mortgagee;

(3) After foreclosure the property is redeemed;

(4) After foreclosure and during the redemption period the mortgagee gives notice that it will not tender the property to the Commissioner.

[52 FR 1327, Jan. 13, 1987]

§ 203.316 Termination by prepayment of mortgage.

The contract of insurance shall be terminated if the mortgage is paid in full prior to its maturity.

§ 203.317 Termination by voluntary agreement.

The contract of insurance shall be terminated if the mortgagor and mortgagee jointly request termination.

§ 203.318 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart.

[45 FR 31716, May 14, 1980]

§ 203.319 Pro rata payment of premiums and charges.

No contract of insurance shall be terminated until the mortgagee has paid to the Commissioner the pro rata portion of the current annual MIP or open-end insurance charge as set forth in this subpart.

[37 FR 8662, Apr. 29, 1972]

§ 203.320 Notice and date of termination by Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination date shall be the last day of the month in which one of the following events has occurred:

(a)(1) For those mortgages to which the provisions of §203.368 apply, the

date foreclosure proceedings were instituted by the mortgagee, or the property was otherwise acquired by the mortgagee or a party other than the mortgagee (including the mortgagor or other party as redeptor) if the mortgagee notifies the Commissioner that title will not be conveyed to the Commissioner and a claim for the insurance benefits will not be presented for payment.

(2) For those mortgages to which the provisions of §203.368 do not apply, the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee, if the mortgagee notifies the Commissioner that title will not be conveyed to the Commissioner.

(b) The date the mortgage was prepaid in full.

(c) The date a voluntary termination request is received by the Commissioner.

[36 FR 24508, Dec. 22, 1971, as amended at 52 FR 1327, Jan. 13, 1987]

§ 203.321 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent periodic MIP or open-end insurance charge shall cease and all rights of the mortgagor and mortgagee shall be terminated, except as otherwise provided in this part.

[48 FR 28807, June 23, 1983]

DEFAULT UNDER MORTGAGE

§ 203.330 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month, or that were reported as delinquent the previous month. The report shall be made in a manner prescribed by HUD.

[71 FR 16234, Mar. 31, 2006]

§ 203.331 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month, or that were reported as in default the previous month. The report shall be made in a manner prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

[71 FR 16234, Mar. 31, 2006]

§ 203.332 [Reserved]

§ 203.333 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagor pays to the mortgagee such expenses as the mortgagee has incurred in connection with the foreclosure proceedings and the mortgagee gives written notice of reinstatement to the Commissioner.

CONTINUATION OF INSURANCE

§ 203.340 Special forbearance.

(a) If the conditions of §203.614 are met and special forbearance relief is granted pursuant to that section, the contract of insurance shall continue in

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force except as otherwise provided in this subpart.

(b) The contract of insurance shall continue in force, except as otherwise provided in this subpart, when the conditions of this section which were effective prior to January 1, 1977, have been met and special forbearance relief is granted pursuant thereto prior to January 1, 1977.

[41 FR 49735, Nov. 10, 1976]

§ 203.341 Partial claim.

If the conditions of § 203.371 are met and a partial claim is paid pursuant to that section, the contract of insurance shall continue in force, except as otherwise provided in this subpart.

[62 FR 60129, Nov. 6, 1997]

§ 203.342 Mortgage modification.

If a mortgage is recast pursuant to § 203.616, the principal amount of the mortgage, as modified, shall be considered to be the "original principal balance of the mortgage" as that term is used in § 203.401.

[62 FR 60129, Nov. 6, 1997]

§ 203.343 Partial release, addition or substitution of security.

(a) Except as provided in § 203.389(n), a mortgagee shall not release the security or any part thereof, while the mortgage is insured, without the prior consent of the Commissioner.

(b) A mortgagee may, with the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions:

(1) The mortgagee obtains a good and valid first lien on the property to which the dwelling is removed.

(2) All damages to the structure are repaired without cost to HUD.

(3) The property to which the dwelling is removed is in an area known to be reasonably free from natural hazards or, if in a flood zone, the mortgagor will insure or reinsure under the Federal Flood Insurance Program.

(c) A mortgagee may, without the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing

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the dwelling to a new lot under the following conditions.

(1) The dwelling has survived an earthquake or other disaster with little damage, but continued location on the property might be hazardous.

(2) The conditions stated in paragraph (b) of this section exist.

(3) Immediately following the emergency removal the mortgagee notifies the Commissioner of the reasons for removal.

[41 FR 49735, Nov. 10, 1976]

FORBEARANCE RELIEF FOR MILITARY PERSONNEL

§ 203.345 Postponement of principal payments—mortgagors in military service.

In addition to the special forbearance relief afforded by §§ 203.340 through 203.342, if the mortgagor is a person in the military service (as defined in the Soldiers' and Sailors' Civil Relief Act of 1940), the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage. The agreement shall in no way affect the amount of the annual MIP which will continue to be calculated in accordance with the original amortization provisions of the mortgage.

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "Person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which the mortgagor is in such service shall be excluded in computing the period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in § 203.355 of this subpart. No postponement or delay in the prosecution of

foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

[36 FR 24508, Dec. 22, 1971, as amended at 61 FR 36265, July 9, 1996]

ASSIGNMENT OF MORTGAGE

§ 203.350 Assignment of mortgage.

(a) *Assignment of modified mortgages pursuant to section 230, National Housing Act.* HUD may accept an assignment of any mortgage covering a one-to-four family residence if the following requirements are met:

(1) The mortgage was in default;

(2) The mortgagee has modified the mortgage under § 203.616 to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at an interest rate not exceeding current market interest rates; and

(3) Such other conditions that HUD may prescribe, which may include the requirement that the mortgagee continue to be responsible for servicing the mortgage.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a), the Commissioner shall, upon application by the mortgagee, approve the assignment to the Commissioner of any mortgage insured pursuant to section 248 of the National Housing Act (see § 203.43h) where the mortgagor has been in default for more than 90 days. The mortgagee may not request the Commissioner to accept an assignment until the mortgagee has submitted documents to the Commissioner showing that the requirements of § 203.604 have been met. HUD shall then notify the mortgagee of its approval of the mortgagee's actions under § 203.604 and that the mortgagee may assign the mortgage to the Secretary, or HUD will specify what further action the mortgagee must take to meet the requirements of § 203.604.

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Sec-

retary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided that the requirements of § 203.665 are satisfied.

(d) *Assignment of mortgages authorized by section 203(q), National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) if

(1) The mortgagor has been in default for more than 90 days for failure to make a monthly payment,

(2) The requirements of § 203.666 are satisfied, and

(3) The date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

If the default is non-monetary, the date of default occurs prior to an action described in paragraph (d)(3) of this section, the requirements of § 203.666 are satisfied, and the mortgagor has been in default for more than 30 days, the Secretary may in his or her discretion, upon application by the mortgagee, agree to accept an assignment of the mortgage. If the leasehold estate has terminated before the mortgage has been assigned, or title to the property conveyed, to the Secretary, and the mortgage is in default for any reason for more than 30 days, the Secretary will, upon application by the mortgagee, agree to accept an assignment of the mortgage.

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a

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defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0169)

[51 FR 21872, June 16, 1986, as amended at 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988; 55 FR 282, Jan. 4, 1980; 61 FR 35018, July 3, 1996]

§ 203.351 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record, the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with the receipts covering all disbursements, as required by the fiscal data form. In addition, the following requirements shall be met:

(a) *Items to be included with application.* The following items shall be forwarded to the Commissioner with the application:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

(3) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(5) *Property.* All property of the mortgagor held by the mortgagee or to which it is entitled (other than the

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cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. If a mortgagee's title policy is furnished, the Commissioner shall be a named insured under such policy.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(c) Title evidence for mortgages insured under § 203.43d as set forth in § 203.385 shall accompany the application for insurance benefits.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 7693, Apr. 10, 1972; 42 FR 57435, Nov. 2, 1977]

§ 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

CLAIM PROCEDURE

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (i) of this section, the

mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345 or 203.346. For mortgages where the date of default is on or after February 1, 1998, the mortgagee shall take one or a combination of the following actions within six months of the date of default or within such additional time approved by HUD or authorized by §§ 203.345 or 203.346:

(1) Obtain a deed-in-lieu of foreclosure (see §§ 203.357, 203.389 and 203.402(f) of this part) with title being taken in the name of the mortgagee or the Secretary;

(2) Commence foreclosure;

(3) Enter into a special forbearance agreement under § 203.614;

(4) Complete a modification of the mortgage under § 203.616;

(5) Complete a refinance of the mortgage under § 203.43(c);

(6) Complete an assumption under § 203.512;

(7) File a partial claim under § 203.371; or

(8) Initiate a pre-foreclosure sale under § 203.370.

(b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned; but no later than the number of months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606.

(c) *Prohibition of foreclosure within time limits.* If the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

(1) Do not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), (g), (h) and (i) of this section, the mortgagee must commence foreclosure within 90 days after the expiration of the time

during which foreclosure is prohibited; or

(2) Require the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 90 days after the expiration of the time during which foreclosure is prohibited.

(d) *Property located on Indian land.* Upon default of a mortgage on property located on Indian land insured pursuant to section 248 of the National Housing Act (see § 203.43h of this part), the mortgagee must comply with §§ 203.350(b) and 204.664 of this part.

(e) *Property located on Hawaiian home lands.* Upon default of a mortgage on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (see § 203.43i of this part), the mortgagee must comply with §§ 203.350(c) and 203.665 of this part.

(f) *Property located on the Allegany Reservation of the Seneca Nation of Indians.* Upon default of a mortgage on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (see § 203.43j of this part), the mortgagee must comply with §§ 203.350(d) and 203.666 of this part, unless the mortgagor and the lessor have executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. If a lease renewal or new lease has been executed, the mortgagee must comply with paragraph (a) of this section.

(g) *Pre-foreclosure sale procedure.* Within 90 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, or within the time limit described in paragraph (a) of this section, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed in lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or undertake one of the actions listed at § 203.355(a). The end-of-participation date is defined as:

(1) Four months after the date of commencement of participation, if there is no signed Contract of Sale at

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that time, unless extended by the Commissioner;

(2) Six months after the date of commencement of participation, if there is a signed contract but settlement has not occurred by that date, unless extended by the Commissioner;

(3) The date the mortgagee is notified of the mortgagor's withdrawal from the Pre-foreclosure Sale procedure; or

(4) The date of the letter sent by the mortgagee to the mortgagor prior to the expiration of the customary participation period, terminating the mortgagor's opportunity to participate in the Pre-foreclosure Sale procedure.

(h) *Special forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under §203.614 and the failure continues for 60 days, the mortgagee must undertake one of the actions listed at §203.355(a) within the time limit described in paragraph (a) of this section or 90 days after the mortgagor's failure to meet the special forbearance requirements, whichever is later.

(i) *Modification under §203.616, refinancing under §203.43(c), or assumption under §203.512.* Provided that the mortgagee has established the mortgagor's eligibility within the time frame provided in §203.355(a), if a mortgagee enters into a loss mitigation relief measure (i.e., modification under §203.616, refinance under §203.43(c), or assumption under §203.512) and it fails, the six-month period provided in §203.355(a) is extended by an additional 90 days to allow the mortgagee to try another loss mitigation tool or go to foreclosure.

[57 FR 47970, Oct. 20, 1992, as amended at 59 FR 50143, Sept. 30, 1994; 60 FR 57678, Nov. 16, 1995; 61 FR 35018, July 3, 1996; 62 FR 60129, Nov. 6, 1997]

§203.356 Notice of foreclosure and pre-foreclosure sale; reasonable diligence requirements.

(a) *Notice of foreclosure and pre-foreclosure sale.* The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within 30 days after the institution of foreclosure proceedings. The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within the time-frame prescribed by

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the Secretary, of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

(b) *Reasonable diligence.* The mortgagee must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

[61 FR 36265, July 9, 1996]

§ 203.357 Deed in lieu of foreclosure.

(a) *Mortgagors owning one property.* In lieu of instituting or completing a foreclosure, the mortgagee may acquire property from one other than a corporate mortgagor by voluntary conveyance from the mortgagor who certifies that he does not own any other property subject to a mortgage insured or held by FHA. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance;

(4) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(5) The mortgagee transfers to the Commissioner good marketable title accompanied by satisfactory title evidence.

(b) *Corporate mortgagors.* A mortgagee may accept a deed in lieu of foreclosure from a corporate mortgagor in compliance with the requirements of paragraph (a) of this section, if the mortgagee obtains the prior written consent of the Commissioner.

(c) *Mortgagors owning more than one property.* The mortgagee may accept a deed in lieu of foreclosure in compliance with the provisions of paragraph (a) of this section, from an individual who owns more than one property which is subject to a mortgage insured or held by the FHA if the mortgagee

obtains the prior written consent of the Commissioner.

§ 203.358 Direct conveyance of property.

In acquiring the property or conveying the property to the Commissioner the mortgagee may arrange for the deed to be made directly to the Commissioner from the mortgagor or other grantor. The mortgagee shall be responsible for determining that such conveyance will comply with all of the provisions of this part conveying good marketable title and satisfactory title evidence.

§ 203.359 Time of conveyance to the Secretary.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* After acquiring good marketable title to and possession of the property the mortgagee must transfer the property to the Secretary:

(1) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(2) Within such further time as may be necessary to complete the title examination and perfect the title.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992—*(1) *Conveyance by the mortgagee.* The mortgagee must acquire good marketable title and transfer the property to the Secretary within 30 days of the later of:

(i) Filing for record the foreclosure deed;

(ii) Recording date of deed in lieu of foreclosure;

(iii) Acquiring possession of the property;

(iv) Expiration of the redemption period; or

(v) Such further time as the Secretary may approve in writing.

(2) *Direct conveyance.* In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure

that the property is transferred to the Secretary within 30 days of the reasonable diligence time frame specified in § 203.356 of this part.

[57 FR 47971, Oct. 20, 1992, as amended at 61 FR 36453, July 10, 1996]

§ 203.360 Notice of property transfer or pre-foreclosure sale and application for insurance benefits.

(a) On the date the deed is filed for record the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance and shall assign, without recourse or warranty any or all claims which the mortgagee has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which the mortgagee acquired or conveyed such property, except such claims as may have been released with the approval of the Commissioner.

(b) Within 30 days of the closing of an approved pre-foreclosure sale, the mortgagee shall notify the Commissioner on a form prescribed by him of the pre-foreclosure sale.

[36 FR 24508, Dec. 22, 1971, as amended at 59 FR 50144, Sept. 30, 1994]

§ 203.361 Acceptance of property by Commissioner.

Upon receipt of notice of property transfer the Commissioner shall accept title to and possession of the property as of the date of the filing for record of the deed to the Commissioner, subject to compliance with the regulations in this part.

§ 203.362 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

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(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364.

§ 203.363 Effect of noncompliance with regulations.

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply, or, in the alternative, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992.* If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Secretary may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply. In the alternative to holding processing in abeyance, the Secretary may reconvey title to the property to the mortgagee, in which event the application for insurance benefits shall be considered as cancelled and the mortgagee shall refund the insurance benefits to the Secretary as well as other funds required by § 203.364 of this part. The mortgagee may reapply for insurance benefits at a subsequent date; provided, however, that the mortgagee may not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed by the Secretary, or paid any debenture interest accrued after the date of initial conveyance or after the date conveyance was required by § 203.359 of this part, whichever is earlier, and there will be deducted from the insurance

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benefits any reduction in the Secretary's estimate of the value of the property occurring from the time of reconveyance to the time of reapplication.

[57 FR 47971, Oct. 20, 1992, as amended at 61 FR 36453, July 10, 1996]

§ 203.364 Mortgagee's liability for property expenditures.

Where the Secretary acquires a property and thereafter it becomes necessary for the Secretary to reconvey the property to the mortgagee due to the mortgagee's noncompliance with these regulations or the application for insurance benefits is withdrawn with the consent of the Secretary, the mortgagee shall reimburse the Secretary for all expenses incurred in connection with such acquisition and reconveyance. The reimbursement shall include interest on the amount of insurance benefits refunded by the mortgagee from the date the insurance benefits were paid to the date of refund at an interest rate set in conformity with the Treasury Fiscal Requirements Manual, and the Secretary's cost of holding the property, accruing on a daily basis, from the date the deed to the Secretary was filed for record to the date of reconveyance. These costs are based on the Secretary's estimate of the taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by the Secretary on account of any income received from the property.

[57 FR 47971, Oct. 20, 1992]

§ 203.365 Documents and information to be furnished the Secretary; claims review.

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, in the case of a conveyance claim; or, in the case of a claim arising from a pre-foreclosure sale, within 30 days after the closing of the pre-foreclosure sale, unless extended by the Commissioner, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed; or

evidence, as prescribed by the Secretary, of the closing of the pre-foreclosure sale.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

(b) *Items to be retained by mortgagee.* The mortgagee must retain all cash amounts, held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction, that have not been applied in reduction of the principal mortgage indebtedness.

(c) *Claim file to be maintained by mortgagee.* (1) The Secretary may verify the accuracy of information regarding the insurance claim either before payment of the claim or after payment by periodic reviews of the mortgagee's records. Mortgagees must reimburse the Secretary for any claim and interest overpaid because of incorrect, unsupported, or inappropriate information provided by the mortgagee, or because of failure to provide correct information.

(2) Mortgagees must maintain a claim file containing documentation supporting all information submitted for claim payment for at least three years after a claim has been paid. All claim files for claims paid during a period relating to an unresolved or ongoing claim review must be maintained until final resolution of such review. Information to be maintained in the claim file includes receipts covering all disbursements as required by the fiscal data form, ledger cards covering the mortgage transaction, and any additional information or data relevant to the mortgage transaction or insurance claim.

(3) The Secretary may review any claim file at any time during the three-year period after the claim has been paid. Denial of access to any files will be grounds for withdrawal of the mortgagee's approved lender status, debarment by the Secretary, or immediate suspension of all claim payments.

(4) Within 24 hours of a request by the Secretary, a mortgagee must make available for review, or forward to the Secretary, hard copies of identified claim files.

(d) *Statistical sampling.* HUD may use statistical sampling in selecting claims to be reviewed and in determining the amount due the Secretary because of overpayment.

[57 FR 47972, Oct. 20, 1992, as amended at 59 FR 50144, Sept. 30, 1994]

§ 203.366 Conveyance of marketable title.

(a) *Satisfactory conveyance of title and transfer of possession.* The mortgagee shall tender to the Commissioner a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey good marketable title to the property, which shall be accompanied by title evidence satisfactory to the Commissioner.

(b) *Conveyance of property without good marketable title.* (1) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, if the title to the property conveyed by the mortgagee to the Secretary is not good and marketable, the mortgagee must correct any title defect within 60 days after receiving notice from the Secretary, or within such further time as the Secretary may approve in writing.

(2) If the defect is not corrected within 60 days, or such further time as the Secretary approves in writing, the mortgagee must reimburse the Secretary for HUD's costs of holding the property, accruing on a daily basis, and interest on the amount of insurance benefits paid to the mortgagee at an interest rate set in conformity with the Treasury Fiscal Requirements Manual from the date of such notice to the date the defect is corrected or until the Secretary reconveys the property to the mortgagee, as described in paragraph (b)(3) of this section. The daily holding costs to be charged a mortgagee shall include the costs specified in § 203.364 of this part.

(3) If the title defect is not corrected within a reasonable time, as determined by HUD, the Secretary will, after notice, reconvey the property to the mortgagee and the mortgagee must

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reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part.

[36 FR 24508, Dec. 22, 1971, as amended at 57 FR 47972, Oct. 20, 1992; 61 FR 36453, July 10, 1996]

§ 203.367 Contents of deed and supporting documents.

The deed and supporting accompanying documents shall be as follows:

(a) *Deed.* A deed conveying the property to the Federal Housing Commissioner. The deed shall:

(1) Contain covenants which warrant title against acts of the grantor, and all claiming by, through, or under said grantor, if the grantor is the mortgagee or mortgagor; if the grantor is a party other than the mortgagee or mortgagor, the special warranty covenants may be limited or amended to accord with the law of the particular jurisdiction.

(2) Recite nominal consideration, if such recital is adequate under the laws of the State in which the property is located or such other consideration as may be necessary to support the deed.

(b) *Maps or survey.* A map or diagram showing property location with reference to public streets or roads or a survey, if available. When a part of the property has been taken by condemnation proceedings or conveyance in lieu of condemnation, a map or diagram showing the part taken and the property remaining is required.

(c) *Credit documents.* The original credit and security instruments, if available or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner.

§ 203.368 Claims without conveyance procedure.

(a)(1) The requirements of this section apply to any insured mortgage subject to this subpart which was either insured pursuant to:

(i) A conditional commitment issued on or after November 30, 1983 or, as appropriate,

(ii) An application for mortgage insurance endorsement under the Single Family Direct Endorsement Program, as provided in § 203.255(b), where the property appraisal report was signed by

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the mortgagee's underwriter on or after November 30, 1983.

(2) The requirements of this section shall also apply to any other mortgages subject to this subpart where the mortgagee elects to provide the notice to HUD required by paragraph (d) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this section, the requirements of this section do not apply if the mortgaged property has been damaged as set out in § 203.378.

(c) Nothing in this section shall affect any rights or obligations arising under the procedures set forth in subpart C of this part.

(d) After initiating proceedings to foreclose an insured mortgage within the coverage of paragraph (a)(1) of this section by judicial, statutory, or other means authorized by the mortgage instrument, the mortgagee shall furnish notice of the foreclosure to the Commissioner, containing such information as shall be prescribed by the Commissioner, together with a copy of the notice of sale, on or before the date of first publication, posting, or other notice. The mortgagee foreclosing an insured mortgage subject to this subpart and within the coverage of paragraph (a)(2) of this section may elect to become subject to this section by providing such notices to the Commissioner in accordance with the preceding sentence.

(e) Where notice of the foreclosure sale is provided pursuant to paragraph (d) of this section, the Commissioner may elect to cause the mortgaged property to be appraised and to give written notice to the mortgagee, not less than five days prior to the date of the foreclosure sale, of the Commissioner's estimate of the fair market value of the mortgaged property, less adjustments as the Commissioner may deem appropriate (which may include, without limitation, the Commissioner's estimate of holding costs and resale costs that would be incurred if title to the mortgaged property were conveyed to the Commissioner). Such amount is referred to hereafter as the "Commissioner's adjusted fair market value."

(f) If the Commissioner fails to provide notice of the Commissioner's adjusted fair market value to the mortgagee not less than five days prior to the scheduled date of foreclosure sale, this section shall have no further application and §§203.355 through 203.367 shall apply: *Provided*, that a mortgagee which receives the Commissioner's notice at any time prior to the foreclosure sale may waive late receipt by so notifying the Commissioner, in which case this section shall apply.

(g) If the Commissioner provides notice of the Commissioner's adjusted fair market value in accordance with paragraph (e) of this section the following shall be applicable:

(1) The mortgagee shall tender a bid at the foreclosure sale in the amount of the Commissioner's adjusted fair market value.

(2) If the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale in an amount equal to the Commissioner's adjusted fair market value, the mortgagee may elect to retain title to the property and to file a claim for the insurance benefits computed as provided in §203.401(b).

(3) If a party other than the mortgagee acquires title to the mortgaged property either pursuant to a bid at foreclosure sale or through the redemption of the property in an amount not less than the Commissioner's adjusted fair market value, the mortgagee may file a claim for the insurance benefits computed as provided in §203.401(b).

(4) If the mortgagee acquires title to the mortgaged property pursuant to a bid at foreclosure sale in an amount in excess of the Commissioner's adjusted fair market value, the mortgagee is deemed to have elected to retain title to the property and is limited to filing a claim for the insurance benefits computed as provided in §203.401(b). In the event the mortgagee can show good cause for having bid an amount in excess of the Commissioner's adjusted fair market value, the Commissioner may, at his discretion, waive the provisions of this subparagraph and allow the mortgagee to convey title to the Commissioner and file a claim for the insurance benefits computed as provided in §203.401(a). A mortgagee which has elected to follow the provisions of

this section pursuant to paragraph (a)(2) of this section and bids an amount in excess of the Commissioner's adjusted fair market value shall not be subject to the provisions of this subparagraph, and may elect to retain or convey title in filing a claim for the insurance benefits.

(5) In any other case, the mortgagee may file a claim for insurance benefits only upon conveyance of title to the mortgaged property to the Commissioner.

(h) If the Commissioner provides timely notice of the Commissioner's adjusted fair market value in accordance with paragraph (e), the Commissioner may require the mortgagee to advertise the upcoming sale in addition to the standard legal notices which may be required by state law.

(i) Where a mortgagee files a claim for the insurance benefits without conveying title to the property to the Commissioner, as authorized by this section:

(1) Sections 203.358 through 203.367 shall not be applicable.

(2) The mortgagee shall assign to the Commissioner, without recourse or warranty, any or all claims which the mortgagee has acquired in connection with the mortgage transaction and as a result of the foreclosure proceedings or other means by which the mortgagee or party other than the mortgagee acquired such property, except such claims as may have been released with the approval of the Commissioner.

(3) The mortgagee shall forward to the Commissioner:

(i) Fiscal data pertaining to the mortgage transaction;

(ii) The original credit and security instruments, if available, or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner; and

(iii) Any additional information or data which the Commissioner may require.

(4) The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which the mortgagee is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness. Cash

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amounts shall be itemized and deducted from the claim pursuant to § 203.403. Receipts for disbursements are to be retained by the mortgagee and are to be made available upon request by the Commissioner.

(5) The mortgagee shall file its claim:

(i) Within 30 days after the mortgagee acquired good marketable title to the property; or

(ii) Within 30 days after a party other than the mortgagee acquired good marketable title to the property; or

(iii) In redemption States, within 30 days after the mortgagor or another party redeemed the property or the redemption period has expired; or

(iv) Within such other time as may be determined by the Commissioner.

(6) In any case in which the insurance benefits paid include, pursuant to § 203.402(c), hazard insurance premiums paid by the mortgagee, the portion of the hazard insurance premium allocable to the period after acquisition of title by the mortgagee or a third party shall be deducted from the mortgage insurance benefits otherwise payable.

(Approved by the Office of Management and Budget under control number 2502-0347)

[52 FR 1327, Jan. 13, 1987, as amended at 61 FR 36453, July 10, 1996]

§ 203.369 Deficiency judgments.

(a) *Mortgages insured on or after March 28, 1988.* (1) For mortgages insured pursuant to firm commitments issued on or after March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after March 28, 1988, the Secretary may require the mortgagee diligently to pursue a deficiency judgment in connection with any foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

(2) In cases where the Secretary requires the pursuit of a deficiency judgment and provides the mortgagee with the Secretary's estimate of the fair market value of the property, less adjustments, in accordance with § 203.368(e) of this part, the mortgagee must tender a bid at the foreclosure sale in that amount, and must take all other appropriate steps in accordance

with State law to obtain a deficiency judgment.

(b) *Mortgages insured before March 28, 1988.* For mortgages insured pursuant to firm commitments issued before March 28, 1988, or pursuant to direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter before March 28, 1988, the Secretary may request that the mortgagee diligently pursue a deficiency judgment in connection with the foreclosure. With respect to claims filed for insurance benefits on such mortgages, any judgment obtained by the mortgagee must be assigned to the Secretary.

(c) In cases where pursuit of a deficiency judgment is requested or required under this section, the Commissioner, where the Commissioner determines it appropriate under State law requirements, may extend the otherwise applicable period of time within which a deficiency judgment (and other claims against the mortgagor) and related credit documents must be assigned to the Commissioner under § 203.360, § 203.367 or § 203.368 of this subpart.

(d) In addition to meeting the requirements of § 203.356, in cases where the Commissioner determines it necessary because of State law requirements, the Commissioner may also require (or request, as the Commissioner may determine) the mortgagee to provide the Commissioner with notice of the mortgagee's intent to institute foreclosure proceedings a reasonable amount of time before proceedings are instituted, in order that the Commissioner may be able effectively to require or request the mortgagee, in appropriate cases, to seek a deficiency judgment.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 2535-0093)

[53 FR 4387, Feb. 16, 1988, as amended at 57 FR 47972, Oct. 20, 1992; 61 FR 36453, July 10, 1996]

§ 203.370 Pre-foreclosure sales.

(a) *General.* HUD will pay FHA insurance benefits to mortgagees in cases where, in accordance with all regulations and procedures applicable to pre-

foreclosure sales, the mortgaged property is sold by the mortgagor, after default and *prior to* foreclosure, at its current fair market value (less adjustments as the Commissioner may deem appropriate) but for less than the mortgage loan amount currently outstanding.

(b) *Notification of mortgagor.* The mortgagee shall give notice, according to prescribed procedures, of the opportunity to be considered for the pre-foreclosure sale procedure to each mortgagor in default. All notices to mortgagors must be in an accessible format, if requested, or if required by the person's known disability, as required by 24 CFR part 9.

(c) *Eligibility for the Pre-foreclosure Sale Procedure.* In order to be considered for the pre-foreclosure sale procedure, a mortgagor:

(1) Must be an owner occupant in a single family residence that is security for a mortgage insured under this part, unless otherwise prescribed by the Secretary.

(2) Must have an account in default, for such period as determined by the Secretary, which default is the result of an adverse and unavoidable financial situation.

(3) Must have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary.

(4) Must have received an appropriate disclosure, as prescribed by the Secretary.

[59 FR 50144, Sept. 30, 1994, as amended at 61 FR 35018, July 3, 1996; 72 FR 56161, Oct. 2, 2007]

§ 203.371 Partial claim.

(a) *General.* Notwithstanding the conveyance, sale or assignment requirements for payment of a claim elsewhere in this part, HUD will pay partial FHA insurance benefits to mortgagees after a period of forbearance, the maximum length of which HUD will prescribe, and in accordance with this section.

(b) *Requirements.* The following conditions must be met for payment of a partial claim:

(1) The mortgagor has been delinquent for at least 4 months or such other time prescribed by HUD;

(2) The amount of the arrearage has not exceeded the equivalent of 12 monthly mortgage payments;

(3) The mortgagor is able to resume making full monthly mortgage payments;

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time frame specified by HUD;

(5) The mortgagor is not financially qualified to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included; and

(6) The mortgagor must have made a minimum number of monthly payments as prescribed by the Secretary on a case-by-case basis.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under § 203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall provide HUD with the original credit instrument no later than 60 days after execution. The mortgagee shall provide HUD with the original security instrument, required by paragraph (c) of this section, no later than 6 months following the date of execution. If the mortgagee experiences a delay from the recording authority, it may request an extension of time, in writing, from HUD. If the mortgagee does not provide the original of the note and security instrument within the prescribed deadlines, the mortgagee shall be required to reimburse the amount of the claim paid, including the incentive.

[61 FR 35018, July 3, 1996, as amended at 62 FR 60130, Nov. 6, 1997; 72 FR 56161, Oct. 2, 2007]

CONDITION OF PROPERTY

§§ 203.375–203.376 [Reserved]

§ 203.377 Inspection and preservation of properties.

The mortgagee, upon learning that a property subject to a mortgage insured under this part is vacant or abandoned, shall be responsible for the inspection of such property at least monthly, if the loan thereon is in default. When a mortgage is in default and a payment thereon is not received within 45 days of the due date, and efforts to reach the mortgagor by telephone within that period have been unsuccessful, the mortgagee shall be responsible for a visual inspection of the security property to determine whether the property is vacant. The mortgagee shall take reasonable action to protect and preserve such security property when it is determined or should have been determined to be vacant or abandoned until its conveyance to the Secretary, if such action does not constitute an illegal trespass. “Reasonable action” includes the commencement of foreclosure within the time required by § 203.355(b) of this part.

[57 FR 47972, Oct. 20, 1992]

§ 203.378 Property condition.

(a) *Condition at time of transfer.* When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) *Damage to property by waste.* The mortgagee shall not be liable for damage to the property by waste committed by the mortgagor, its heirs, successors or assigns in connection with mortgage insurance claims paid on or after July 2, 1968.

(c) *Mortgagee responsibility.* The mortgagee shall be responsible for:

(1) Damage by fire, flood, earthquake, hurricane, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the mortgagee’s failure to take reasonable action to inspect, protect and preserve such properties as required by § 203.377 of

this part, as to all mortgages insured on or after January 1, 1977; and

(3) As to all mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee’s underwriter on or after November 19, 1992, any damage of whatsoever nature that the property has sustained while in the possession of the mortgagee if the property is conveyed to the Secretary without notice to and approval by the Secretary as required by § 203.379 of this part.

(d) *Limitation.* The mortgagee’s responsibility for property damage shall not exceed the amount of its insurance claim as to a particular property.

[36 FR 34508, Dec. 22, 1971. Redesignated and amended at 41 FR 49735, Nov. 10, 1976; 57 FR 47973, Oct. 20, 1992; 58 FR 32057, June 8, 1993; 61 FR 36265, July 9, 1996; 61 FR 36453, July 10, 1996]

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee’s failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(1) If the prior approval of the Secretary is obtained, there will be deducted from the insurance benefits the Secretary’s estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(2) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(i) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal

to the lesser of 100 percent of the insurable value of the improvements, or the principal loan balance of the mortgage; and

(ii) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(iii) The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (a)(2)(i) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(iv) The extent of coverage obtained by the mortgagee in accordance with paragraph (a)(2)(iii) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(v) The mortgagee took the actions required by § 203.377 of this part.

(3) The certification requirements set out in paragraph (a)(2) of this section apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986) Edition as it existed immediately before September 30, 1986.

(4)(i) As used in this section, *reasonable rate* means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate.

(ii) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the HUD Field Office having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for

a determination of whether the rate is reasonable. HUD will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization.

(b) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, the provisions of paragraph (a) of this section apply and, in addition, if the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, hurricane, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 203.377 of this part, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary. The Secretary will either:

(1) Allow the mortgagee to convey the property damaged; or

(2) Require the mortgagee to repair the damage before conveyance, and the Secretary will reimburse the mortgagee for reasonable payments not in excess of the Secretary's estimate of the cost of repair, less any insurance recovery.

(c) In the event the damaged property is conveyed to the Secretary without prior notice or approval as provided in paragraphs (a) or (b) of this section, the Secretary may:

(1) After notice, reconvey the property to the mortgagee and the mortgagee must reimburse the Secretary in accordance with §§ 203.363 and 203.364 of this part, or

(2) Require the mortgagee to reimburse the Secretary for the greater of the Secretary's estimate of the cost of repair or any insurance recovery.

[57 FR 47973, Oct. 20, 1992, as amended at 61 FR 36265, July 9, 1996]

§ 203.380 Certificate of property condition.

(a) The mortgagee shall either:

(1) Certify that as of the date of the filing of deed for record, or assignment

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of the mortgage to the Secretary, the property was:

(i) Undamaged by fire, flood, earthquake, hurricane or tornado; and

(ii) As to mortgages insured or for which commitments to insure were issued on or after January 2, 1977, undamaged due to failure of the mortgagee to take action as required by § 203.377; and

(iii) As to mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, undamaged while the property was in the possession of the mortgagee; or

(2) Attach to its claim a copy of the Secretary's authorization to convey the property in damaged condition.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Secretary as establishing the condition of the property, as of the date of the filing of the deed or assignment of the mortgage.

[57 FR 47973, Oct. 20, 1992, as amended at 61 FR 36265, July 9, 1996; 61 FR 36453, July 10, 1996]

§ 203.381 Occupancy of property.

The mortgagee shall certify that the property is vacant and contains no personal property as of the date of filing for record of the deed to the Secretary or that the Secretary has consented to accept the property occupied.

[45 FR 59563, Sept. 10, 1980]

§ 203.382 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for debentures and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

PROPERTY TITLE TRANSFERS AND TITLE WAIVERS

§ 203.385 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to the Commissioner:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in the Commissioner and inure to the benefit of his successors in office.

(b) *Mortgagee's policy of title insurance.* A mortgagee's policy of title insurance supplemented by an Abstract and an Attorney's Certificate of Title covering the period subsequent to the date of the mortgage, the terms of the policy shall be such that the liability of the title company will continue in favor of the Commissioner after title is conveyed to him. The policy may be drawn in favor of the mortgagee and the Federal Housing Commissioner, "as their interests may appear", with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles. If title evidence

consists of an Abstract and an Attorney's Certificate of Title, the search shall extend for at least forty years prior to the date of the Certificate to a well recognized source of good title;

(d) *Torrens of similar certificate*. A Torrens or similar title certificate; or

(e) *Title standard of U.S. or State government*. Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

§ 203.386 Coverage of title evidence.

Evidence of title shall be executed as of a date to include the recordation of the deed to the Commissioner. The evidence of title shall show that according to the public records, there are not, at such date, any outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments.

§ 203.387 Acceptability of customary title evidence.

If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence shall be satisfactory to the Secretary and shall be considered as good and marketable. In cases of disagreement, the Secretary will make the final decision.

[57 FR 47974, Oct. 20, 1992]

§ 203.389 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

(2) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of

the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

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(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.

(1) 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.

(a) 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 either at, or prior to, the time of payment.

(b) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

[80 FR 51468, Aug. 25, 2015]

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

(a) *Conveyed properties.* Where a claim for the insurance benefits is filed in ac-

cordance 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 distributed to the mortgagee from the original principal balance of the mortgage (as increased by the amount of

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open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date 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 the proceeds of the foreclosure sale.

(3) If the mortgagee acquires title to the mortgaged property pursuant to a bid not less in amount than the Commissioner's adjusted fair market value, and the mortgagor or another party redeems the property, the amount of the insurance benefits shall be determined by deducting the amount paid to redeem the property and received by the mortgagee from the original principal balance of that 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, 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 adjustments shall be made for any such items covered by that amount paid by the mortgagor or other party to redeem the property.

(c) *Pre-foreclosure Sales.* Where a claim for insurance benefits is filed in accordance with this subpart, based on a pre-foreclosure sale approved by or on behalf of the Secretary (under the provisions of §203.370), the amount of 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 closing of the pre-foreclosure sale, the amount of all applicable items set forth in §203.402; provided however that appropriate adjustment shall be made for any such items covered by proceeds of the pre-foreclosure sale.

(d) *Final Payment.* (1) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the

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Commissioner of the final payment except for:

(i) Cases where the Commissioner requests or requires a deficiency judgment.

(ii) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

(2) For the purpose of this section, the term *final payment* shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to §203.365. In the case of claims filed under claims without conveyance of title, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§203.368 and 203.401(b). In the case of claims filed pursuant to pre-foreclosure sales, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§203.370 and 203.401(d).

[52 FR 1328, Jan. 13, 1987, as amended at 56 FR 3215, Jan. 29, 1991; 59 FR 50144, Sept. 30, 1994]

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner; and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure; and those properties sold under an approved pre-foreclosure sale shall include the following items:

(a) Taxes, ground rents, water rates, and utility charges that are liens prior to the mortgage.

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage.

(c) Hazard insurance premiums on the mortgaged property not in excess of a *reasonable rate* as defined in §203.379(a)(4).

(d) Periodic MIP or open-end insurance charges;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner, or was acquired by the mortgagee and retained pursuant to § 203.368;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or \$75, whichever is the greater. For mortgages insured on or after February 1, 1998, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area.

(g)(1) *For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter before November 19, 1992, reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property.*

(2) *For mortgages insured under firm commitments issued on or after November*

19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, reasonable payments made by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359 of this part.

(3) Reasonable costs for performing the inspections required by § 203.377 of this part and to determine if the property is vacant or abandoned are considered to be costs of protecting, operating or preserving the property.

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan;

(i) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of any MIP and open-end insurance charge by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all of the period of the mortgagor's military service and three months thereafter;

(j) Charges for the administration, operation, maintenance, or repair of community-owned property or the maintenance or repair of the mortgaged property, paid by the mortgagee for the purpose of discharging an obligation arising out of a covenant filed for record prior to the issuance of the mortgage; and charges for the repair or maintenance of the mortgaged property required by, and in an amount approved by, the Secretary under § 203.379 of this part.

(k)(1) Except as provided in paragraphs (k)(1)(i) and (ii) of this section, for properties conveyed to the Secretary and endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in

cash, if such portion had been paid in debentures, and for properties conveyed to the Secretary and endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date of claim payment, on the portion of the insurance benefits paid in cash.

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(1), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may specify in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

(2)(i) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned from the date the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of

§§ 203.355, 203.356, and 203.368(i)(3) and (5) within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid without conveyance of title to the Commissioner in accordance with § 203.368 and was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in § 203.405(b) from the date specified in § 203.410, as applicable, to the date that the mortgagee or a party other than the mortgagee acquires good marketable title to the mortgaged property, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in § 203.405(b) from the date the mortgagee or a person other than the mortgagee acquires good marketable title to the mortgaged property to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §§ 203.355, 203.356, and 203.368(i)(3) and (5) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(3)(i) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, and the mortgage was endorsed for insurance on or before January 23, 2004, an amount equivalent to the sum of:

(A) The debenture interest that would have been earned, as of the date of the closing of the pre-foreclosure

sale on an amount equal to the amount by which an insurance claim determined in accordance with §203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) The debenture interest that would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures; except that if the mortgagee fails to meet any of the applicable requirements of §203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(ii) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner, in accordance with §203.370, and the mortgage was endorsed for insurance after January 23, 2004, an amount equivalent to the sum of:

(A) Debenture interest at the rate specified in §203.405(b) from the date specified in §203.410, as applicable, to the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with §203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(B) Debenture interest at the rate specified in §203.405(b) from the date of the closing of the pre-foreclosure sale to the date when the payment of the claim is made, on the portion of the insurance benefits paid in cash, except that if the mortgagee fails to meet any of the applicable requirements of §203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Reasonable costs of appraisal under §203.368(e) or pursuant to §203.370;

(m) Costs of additional advertising under 203.368(h);

(n) Costs of foreclosure as computed in paragraph (f) of this section where the acquiring party is one other than the mortgagee, as provided in §203.368;

(o) In any case in which the Commissioner, pursuant to §203.369, requires or requests that the mortgagee seek a deficiency judgment, an amount necessary to reimburse the mortgagee for those additional costs incurred that exceed the costs of foreclosure. In those jurisdictions that require the initiation of a judicial foreclosure action in order to obtain a deficiency judgment, a mortgagee shall receive full reimbursement for the costs of the foreclosure action, where, but for the requested deficiency judgment, judicial foreclosure would not have been necessary.

(p) An amount approved by HUD and paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure and, if authorized by HUD, an administrative fee approved by HUD paid to the mortgagee for its role in facilitating a successful deed in lieu of foreclosure, not to be subject to the payment of debenture interest thereon.

(q) Reasonable costs incurred in evicting occupants and in removing personal property from acquired properties;

(r) Notwithstanding any other provision in this section, the mortgagee will not be reimbursed for any expenses incurred in connection with the property after a reconveyance from the Secretary to the mortgagee as provided in §203.363(b) of this part.

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by HUD, to determine the status of a mortgagor meeting all other criteria for approval to participate in the pre-foreclosure sale procedure, or to determine if a mortgagor meets the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure.

(t) The administrative fee as authorized by the Secretary and payable to the mortgagee for its role in facilitating a successful pre-foreclosure sale,

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said fee not to be subject to the payment of debenture interest thereon.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976; 45 FR 56801, Aug. 6, 1980; 48 FR 28806, June 23, 1983; 51 FR 28551, Aug. 8, 1986; 52 FR 1329, Feb. 13, 1987; 53 FR 4388, Feb. 16, 1988; 57 FR 47974, Oct. 20, 1992; 59 FR 50145, Sept. 30, 1994; 61 FR 35018, July 3, 1996; 61 FR 36266, July 9, 1996; 61 FR 36453, July 10, 1996; 62 FR 60130, Nov. 6, 1997; 71 FR 35993, June 22, 2006; 72 FR 56161, Oct. 2, 2007]

§ 203.402a Reimbursement for uncollected interest.

The mortgagee shall be entitled to receive an allowance in the insurance settlement for unpaid mortgage interest if the mortgagor fails to meet the requirements of a forbearance agreement entered into pursuant to §203.614 and this failure continues for a period of 60 days. The interest allowance shall be computed to:

(a) The earliest of the applicable following dates, except as provided in paragraph (b) of this section:

(1) The date of the initiation of foreclosure;

(2) The date of the acquisition of the property by the mortgagee by means other than foreclosure;

(3) The date the property was acquired by the Commissioner under a direct conveyance from the mortgagor;

(4) Ninety days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or such other date as the Commissioner may approve in writing prior to the expiration of the 90-day period; or

(5) The date the mortgagee sends the mortgagor notice of eligibility to participate in the Pre-Foreclosure Sale procedure; or

(b) The date foreclosure is initiated or a deed in lieu is obtained, or the date such actions were required by §203.355(c), whichever is earlier, if the commencement of foreclosure within the time limits described in §203.355(a), (b), (g), or (h) is precluded by:

(1) The laws of the State in which the mortgaged property is located; or

(2) Federal bankruptcy law.

[60 FR 57678, Nov. 16, 1995, as amended at 61 FR 35019, July 3, 1996]

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§ 203.403 Items deducted from payment—conveyed and non-conveyed properties.

There shall be deducted from the total of the added items in §§203.401 and 203.402 the following cash items:

(a) All amounts received by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(c) All cash retained by the mortgagee including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(d) With regard to claims filed pursuant to successful pre-foreclosure sales, all amounts received by the mortgagee relating to the sale of the property.

[36 FR 24508, Dec. 22, 1971, as amended at 52 FR 1329, Jan. 13, 1987; 59 FR 50145, Sept. 30, 1994]

§ 203.404 Amount of payment—assigned mortgages.

Upon an acceptable assignment of a mortgage, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount determined by:

(a) Adding the following items:

(1) Any accrued and unpaid mortgage interest.

(2) Any advances made under the mortgage and approved by the Commissioner.

(3) Reimbursement for such costs and attorney's fees as HUD finds were properly incurred in connection with the defaulted mortgage and its modification and assignment to HUD.

(4) For mortgages endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned on the portion of the insurance benefits

paid in cash, as of the date such payment is made, and for mortgages endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.405(b), from the date specified in § 203.410 to the date of claim payment on the portion of the insurance benefits paid in cash, except that when the mortgagee fails to meet any one of the requirements of §§ 203.350(e), 203.351, and 203.353 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(5) An administrative fee to the mortgagee for modifying the mortgage.

(6) A fee for servicing the mortgage assigned to HUD, if HUD requires such servicing.

(b) Deducting all cash retained by the mortgagee, including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from final payment by the Commissioner. For the purpose of this section, the term *final payment* shall mean the payment which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information pursuant to § 203.351 of this part.

[36 FR 24508, Dec. 22, 1971, as amended at 55 FR 283, Jan. 4, 1990; 56 FR 3215, Jan. 29, 1991; 61 FR 35019, July 3, 1996; 71 FR 35994, June 22, 2006]

§ 203.405 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the day the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is higher. For applications involving mortgages originated under the single family Direct

Endorsement program, debentures shall bear interest from the date of issue, payable semiannually on the first day of January and on the first day of July of each year at the rate in effect as of the date the mortgage was endorsed for insurance;

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

[71 FR 35994, June 22, 2006]

§ 203.406 Maturity of debentures.

Debentures shall mature 20 years from the date of issue.

§ 203.407 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.408 Form and amounts of debentures.

Debentures issued under this part shall be in such form and amounts; and shall be subject to such term and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

[59 FR 49816, Sept. 30, 1994]

§ 203.409 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest

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at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 203.410 Issue date of debentures.

(a) *Conveyed properties, claims without conveyance, pre-foreclosure sales*— Where the property is conveyed to the Commissioner, or the mortgagee or other party acquires title to the property under the claim without conveyance procedure or the pre-foreclosure sale procedure, debenture shall be dated:

(1) If issued prior to September 2, 1964, or issued on or after such date and a certificate of claim is also issued, as of one of the dates as follows:

- (i) The foreclosure proceedings were instituted;
- (ii) The property was otherwise acquired by the mortgagee after default;
- (iii) The property was acquired by the Commissioner, if directly conveyed to the Commissioner from the mortgagor; or
- (iv) The property was acquired after default by a third party under the pre-foreclosure sale procedure.

(2) If issued on or after September 2, 1964, and a certificate of claim is not issued, as of the date of default as defined in this part.

(3) As of the day after the date to which mortgage interest is computed as specified in § 203.402a, if the insurance settlement includes an allowance for uncollected interest in connection with a special forbearance.

(b) *Assigned mortgages.* Where the mortgage is assigned to the Commissioner, debentures shall be dated as of the date of the assignment.

(c) Notwithstanding paragraph (a) of this section, in connection with conveyed properties and claims without conveyance, debentures issued as reimbursement for expenditures made by a mortgagee after the date of default shall be dated as of the date the expenditure is actually made by the mortgagee.

[36 FR 24508, Dec. 22, 1971, as amended at 50 FR 3892, Jan. 29, 1985; 52 FR 1329, Jan. 13, 1987; 59 FR 50145, Sept. 30, 1994; 60 FR 57678, Nov. 16, 1995]

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§ 203.411 Cash adjustment.

Any difference of less than \$50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

[59 FR 49816, Sept. 30, 1994]

§ 203.412 Payment for foreclosure alternative actions.

Notwithstanding the conveyance, sale, or assignment requirements for payment of a claim elsewhere in this part, HUD may pay the mortgagee, in accordance with procedures prescribed by HUD, for the following foreclosure alternative actions, in such amounts as HUD determines:

- (a) Assumptions under § 203.512;
- (b) Special forbearance under §§ 203.471 and 203.614;
- (c) Recasting or modification of defaulted mortgages under § 203.616, where the mortgagee is not reimbursed under § 203.405(a);
- (d) Refinancing under § 203.43(c).

[61 FR 35019, July 3, 1996]

§ 203.413 [Reserved]

§ 203.414 Amount of payment—partial claims.

(a) *Claim amount.* Where a claim for partial insurance benefits is filed in accordance with § 203.371, the amount of the insurance benefits shall consist of the arrearage not to exceed an amount equivalent to 12 monthly mortgage payments, and any costs prescribed by HUD related to the default.

(b) *Servicing fee.* The claim may also include a payment for activities, such as servicing the subordinate mortgage, which HUD may require.

[61 FR 35019, July 3, 1996, as amended at 62 FR 60130, Nov. 6, 1997]

CERTIFICATE OF CLAIM

§ 203.415 Delivery of certificate of claim.

(a) If the mortgage was accepted for insurance pursuant to a commitment issued prior to September 2, 1964, the

mortgagee may, by filing a written request with the application for debentures, receive in addition to the debentures and the cash adjustment check, a certificate of claim issued in accordance with section 204(e) of the Act. This certificate shall become payable (if at all) as prescribed in section 204(f) of the Act.

(b) If the mortgage was accepted for insurance pursuant to a commitment issued on or after September 2, 1964, or under the Direct Endorsement, Lender Insurance, or Coinsurance programs, no certificate of claim will be issued.

[36 FR 24508, Dec. 22, 1971, as amended at 57 FR 58349, Dec. 9, 1992; 62 FR 30227, June 2, 1997]

§ 203.416 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and cash adjustment check. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 203.417 Rate of interest of certificate of claim.

Each certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

MUTUAL MORTGAGE INSURANCE FUND
AND DISTRIBUTIVE SHARES

§ 203.420 Nature of Mutual Mortgage Insurance Fund.

The Mutual Mortgage Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.

For any semiannual period in which Mutual Mortgage Insurance operations shall result in a net income, or loss, the Commissioner shall allocate, after taking into account the actuarial status of the entire Mutual Mortgage Insurance Fund, such net income or such loss to the General Surplus Account and/or to the Participating Reserve Account as the Commissioner may determine to be in accord with sound actuarial and accounting practice. In determining net income or loss, the Commissioner shall take into consideration all income received from fees, premiums and earnings on investments of the fund, operating expenses and provision for losses to the fund.

[56 FR 18948, Apr. 24, 1991]

§ 203.422 Right and liability under Mutual Mortgage Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee shall be subject to any liability arising under the mutuality of the Mutual Mortgage Insurance Fund.

§ 203.423 Distribution of distributive shares.

(a) The Commissioner may provide for the distribution to the mortgagor of a share of the participating reserve account if the contract of insurance is terminated by:

(1) Conveyance to one other than the Commissioner and a claim for the insurance benefits is not presented by the mortgage (§ 203.315), provided, however, in the case of a mortgage insured pursuant to an application for a conditional commitment received on or after May 19, 1988, (or, as appropriate, an application for mortgage insurance endorsement under the Single Family Direct Endorsement program, as provided in § 203.255, where the property appraisal report is signed by the mortgagee's underwriter on or after May 19, 1988, no distribution shall be made if the mortgagee forecloses the mortgage or accepts a deed-in-lieu of foreclosure;

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(2) Prepayment of the mortgage (§203.316); or

(3) Voluntary agreement of the mortgagor and mortgagees (§203.317).

(b) The Commissioner shall determine the amount of the distributive share by multiplying the amount of the premium or premiums paid by the applicable distributive share percentage for mortgages insured in the year the mortgage was endorsed for insurance. The Commissioner shall determine the applicable distributive share percentage in an equitable manner and in accordance with sound financial and actuarial practice, taking into account the cumulative actual financial and actuarial experiences through the end of the most recent calendar year.

[48 FR 28806, June 23, 1983, as amended at 52 FR 1329, Jan. 13, 1987; 53 FR 10530, Apr. 1, 1988; 61 FR 36453, July 10, 1996]

§ 203.424 Maximum amount of distributive shares.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate scheduled annual premiums of the mortgagor to the year of termination of the insurance.

§ 203.425 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Mutual Mortgage Insurance Fund shall be final and conclusive.

§ 203.426 Inapplicability to housing in older declining urban areas.

The provisions of §§203.420 through 203.425 shall not apply to mortgages financing housing in declining urban areas meeting the requirements of §203.43a.

§ 203.427 Statute of limitations on payment of distributive shares.

The Commissioner shall not distribute any distributive share to an eligible mortgagor under §203.423 beginning on the date which is six years after the date the Commissioner first transmitted written notification of eligibility to the last known address of the mortgagor, unless the mortgagor has applied in accordance with procedures prescribed by the Commissioner for payment of the share within the

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six-year period. The Commissioner shall transfer any amounts no longer eligible for distribution under this section from the Participating Reserve Account to the General Surplus Account.

[59 FR 49816, Sept. 30, 1994]

SALE, ASSIGNMENT AND PLEDGE OF INSURED MORTGAGE

§ 203.430 Sale of interests in insured mortgages.

No mortgagee may sell or otherwise dispose of any insured mortgage, or group of insured mortgages, or any partial interest in such mortgage or mortgages by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.431 Sale of insured mortgage to approved mortgagee.

An insured mortgage may be sold to another approved mortgagee. The seller shall notify HUD of the sale within 15 calendar days, on a form prescribed by HUD and acknowledged by the buyer.

[45 FR 27929, Apr. 25, 1980]

§ 203.432 Effect of sale of insured mortgage.

When an insured mortgage is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay mortgage insurance premiums until the notice required by §203.431 is received by HUD.

[45 FR 27929, Apr. 25, 1980]

§ 203.433 Assignments, pledges and transfers by approved mortgagee.

(a) An assignment, pledge, or transfer of an insured mortgage or group of insured mortgages, not constituting a final sale, may be made by an approved mortgagee to another approved mortgagee provided the following requirements are met:

(1) The assignor, pledgor or transferor shall remain the mortgagee of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(b) An assignment or transfer of an insured mortgage or group of insured mortgages may be made by an approved mortgagee to other than an approved mortgagee provided the requirements under paragraphs (a)(1) and (2) of this section are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved mortgagee that:

(i) It has assets of \$100,000 or more; and

(ii) It has lawful authority to hold an insured mortgage or group of insured mortgages.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within 1 year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such mortgage or group of mortgages.

(ii) The transferor or assignor shall obtain a sale and transfer of such mortgage or group of mortgages to an approved mortgagee.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

§ 203.434 Declaration of trust.

A sale of a beneficial interest in a group of insured mortgages, where the interest to be acquired is related to all of the mortgages as an entirety, rather than an interest in a specific mortgage shall be made only pursuant to a declaration of trust, which has been ap-

proved by the Commissioner prior to any such sale.

§ 203.435 Transfers of partial interests.

A partial interest in an insured mortgage may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortgagee.* The insured mortgage shall be held by an approved mortgagee which, for the purposes of this section, shall be referred to as the *principal mortgagee*.

(b) *Interest of principal mortgagee.* The principal mortgagee shall retain and hold for its own account a financial interest in the insured mortgage.

(c) *Qualification for holding partial interest.* A partial interest in an insured mortgage shall be issued to and held only by:

(1) A mortgagee approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal mortgagee that:

(i) It has assets of \$100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured mortgage.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal mortgagee shall retain title to the mortgage and remain the 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 principal mortgagee with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(3) The mortgage documents shall remain in the custody of the principal mortgagee.

(4) The responsibility for servicing the insured mortgages shall remain with the principal mortgagee.

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GRADUATED PAYMENT MORTGAGES

§ 203.436 Claim procedure—graduated payment mortgages.

All of the provisions of this subpart are applicable to mortgages insured under the provisions of § 203.45 except as provided in this section.

(a) *Beginning of Amortization* means the date one month prior to the date of the first monthly payment to principal or interest.

(b) The phrases *unpaid principal balance of the loan* or *principal of the mortgage which was unpaid* as used in this subpart, shall be construed to refer to the outstanding mortgage amount as increased by any accrued mortgage interest which was unpaid pursuant to a financing plan approved by the Secretary.

[41 FR 42949, Sept. 29, 1976]

COOPERATIVE UNIT MORTGAGES

§ 203.437 Mortgages involving a dwelling unit in a cooperative housing development.

(a) The provisions of §§ 203.251(d), 203.366 and 203.440 through 203.495 shall not apply to mortgages insured pursuant to section 203(n) of the National Housing Act.

(b) References in this subpart to the term *deed* and *deed in lieu of foreclosure*, or the word *property* when found in the phrases *conveyance of property*, *acquisition of property*, or other phrases indicating transfer of property, shall be construed to mean the assignment of the Corporate Certificate and Occupancy Certificate. However, when the use of such terms, as interpreted in light of section 203(n) of the National Housing Act, clearly indicates that reference to the dwelling unit is intended, such terms shall mean the dwelling unit identified in the Occupancy Certificate.

(c) In addition to the requirements of § 203.365, the mortgagee shall forward to the Secretary within 45 days after the transfer of the Corporate Certificate:

(1) A statement certified by the officer of the corporation charged with maintenance of the Corporate Certificate Transfer Book that such book currently shows that the Secretary is the

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owner of the Corporate Certificate; and,

(2) The Occupancy Certificate in the name of the Secretary.

(d) The mortgagee shall tender to the Secretary good and marketable title to the Corporate Certificate and the exclusive right of permanent possession of the dwelling unit.

(e) In lieu of the types of title evidence provided in § 203.385, the Secretary will accept a legal opinion signed by an attorney at law experienced in the examination of titles that the Secretary has good and marketable title to the Corporate Certificate and the exclusive right of possession of the dwelling unit.

(f) The Secretary may accept assignment of mortgages insured under this part if it is determined by the Secretary that it is in the Department's interest to do so provided that the blanket mortgage is in default and the holder of such mortgage has announced an intention to foreclose.

[42 FR 40432, Aug. 10, 1977; 42 FR 57435, Nov. 2, 1977]

MORTGAGES ON PROPERTY LOCATED ON INDIAN LAND

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

(a) *Exemptions.* The provisions of § 203.366 shall not apply to mortgages insured pursuant to section 248 of the National Housing Act.

(b) *Claim procedure.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits on a mortgage insured under § 203.43h when (1) the mortgagor is more than 90 days in default; (2) the mortgagee has submitted appropriate documentation to the Secretary in accordance with § 203.350(b); and (3) the Secretary has approved the assignment of the mortgage.

(c) *Foreclosure by HUD.* HUD may initiate foreclosure proceedings with respect to any mortgage acquired under this section in a tribal court, a court of competent jurisdiction or Federal district court. If the mortgagor remains on the property following foreclosure,

HUD may seek an eviction order from the court hearing the foreclosure action.

[51 FR 21872, June 16, 1986, as amended at 61 FR 35019, July 3, 1996]

MORTGAGES ON PROPERTY LOCATED ON
HAWAIIAN HOME LANDS

§ 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.

(a) *Exemptions.* The provisions of §§ 203.351(a)(8), 203.353(a), and 203.368, do not apply to mortgages insured pursuant to section 247 of the National Housing Act.

(b) *Claim procedure.* Where the mortgage is 180 days or more in default, the mortgagee may assign the mortgage to the Secretary and file its claim for insurance benefits in accordance with the provisions of this subpart. No claim on an insured mortgage will be paid other than through assignment of the mortgage.

(c) *Notice of delinquency.* Once each month on a day prescribed by HUD, the mortgagee shall notify the Department of Hawaiian Home Lands of all mortgages insured pursuant to section 247 of the National Housing Act on leaseholds of Hawaiian home lands that are delinquent on the last day of the month, or that were reported as delinquent the previous month. The notice is in addition to the requirement in §§ 203.330 and 203.331.

[52 FR 8068, Mar. 16, 1987, as amended at 52 FR 9989, Mar. 27, 1987 and 52 FR 28470, July 30, 1987, and amended at 55 FR 283, Jan. 4, 1990; 71 FR 16234, Mar. 31, 2006]

MORTGAGES ON PROPERTY IN ALLEGANY
RESERVATION OF SENECA INDIANS

§ 203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(a) *Applicability.* This section shall apply to mortgages authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) only when the date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with

a term established by an arbitration award.

(b) *Claims.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits when the Secretary has agreed to accept assignment of a mortgage in accordance with § 203.350(d) and the mortgagee has complied with §§ 203.351 and 203.353.

(c) *Exceptions.* Notwithstanding § 203.366, title to a leasehold estate conveyed to the Commissioner is not required to be marketable as to the term of the lease, provided that the mortgagee has taken any actions required by the Secretary to attempt to obtain a long-term renewal of the lease. Title evidence will be required in a form satisfactory to the Commissioner (see § 203.385) unless the Commissioner agrees to accept title to a leasehold estate without title evidence.

[52 FR 48202, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

REHABILITATION LOANS

§ 203.440 Definitions.

All of the definitions contained in § 203.50 of this subchapter shall apply to §§ 203.440 *et seq.* In addition the following terms shall have the meaning indicated:

(a) *Insured loan* means a loan which has been insured as evidenced by the issuance of an Insurance Certificate or by the endorsement of the note for insurance by the Commissioner.

(b) *Contract of insurance* means the agreement evidenced by the issuance of an Insurance Certificate or by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 203.440 *et seq.* and the applicable provisions of the Act.

(c) *Insurance premium* means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(d) *Beginning of amortization* means the date one month prior to the date of the first monthly payment to principal and interest.

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(e) *Maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the original note and security instrument.

(f) *Debentures* means registered, transferable securities in book entry or certificated form which are valid and binding obligations, unconditionally guaranteed as to principal and interest by the United States.

[36 FR 24508, Dec. 22, 1971, as amended at 59 FR 49816, Sept. 30, 1994]

§ 203.441 Insurance of loan.

Under compliance with the commitment, or as provided in §203.255(b) with respect to mortgages processed under the Direct Endorsement program, the Commissioner shall insure the loan evidencing the insurance by the issuance of an insurance certificate which will identify the regulations under which the loan is insured and the date of insurance.

[57 FR 58349, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993]

§ 203.442 Contract created by Insurance Certificate or by endorsement.

The loan is insured from the date of the issuance of an Insurance Certificate or from the date of the endorsement of the note. The Commissioner and the lender shall thereafter be bound by the Act and the regulations in §§203.440 *et seq.* with the same force and to the same extent as if a separate contract had been executed relating to the insured loan.

§ 203.443 Insurance premium.

All of the provisions of §§203.260 through 203.269¹ concerning mortgage insurance premiums, apply to loans insured under §203.50.

[47 FR 30753, July 15, 1982]

§ 203.457 Voluntary termination of contract.

Upon request by the borrower and lender the Commissioner may terminate the insurance contract on the loan. The lender shall cancel the insurance endorsement on the insurance cer-

¹Section 203.269 was removed at 48 FR 35089, Aug. 3, 1983.

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tificate or note upon receipt of notice from the Commissioner that the contract of insurance is terminated.

[37 FR 8662, Apr. 29, 1972]

§ 203.458 Termination by prepayment of loan.

The contract of insurance shall be terminated if the loan is paid in full prior to its maturity.

§ 203.459 Notice of termination by lender.

No contract of insurance shall be terminated until the lender has given written notice thereof to the Commissioner within 15 calendar days from the occurrence of one of the approved methods of termination set forth in this subpart.

[45 FR 31716, May 14, 1980]

§ 203.462 Pro rata payment of premium before termination.

No contract of insurance shall be terminated until the lender has paid to the Commissioner the pro rata portion of the current annual insurance premium.

§ 203.463 Notice and date of termination by Commissioner.

The Commissioner shall notify the lender that the contract of insurance has been terminated and the effective termination. The termination date shall be the last day of the month in which:

- (a) The loan was prepaid; or
- (b) A voluntary termination request is received by the Commissioner, or
- (c) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.464 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent insurance premium shall cease and all rights of the borrower and lender shall be terminated.

§ 203.466 Definition of delinquency and requirement for notice of delinquency to HUD.

- (a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month, or that were reported as delinquent the previous month. The report shall be made in a manner prescribed by HUD.

[71 FR 16234, Mar. 31, 2006]

§ 203.467 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the mortgage; or

(2) The first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month, or that were reported as in default the previous month. The report shall be made on a form prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

[71 FR 16234, Mar. 31, 2006]

§ 203.468 [Reserved]

§ 203.469 Reinstatement of defaulted loan.

If after default and prior to assignment by the lender of the loan to the Commissioner, the borrower shall pay to the lender all monthly payments in default, written notice shall be given to the Commissioner within 30 days and the insurance shall continue as if such default had not occurred.

§ 203.471 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by the Secretary, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by the Secretary.

[61 FR 35019, July 3, 1996]

§ 203.472 Relief for borrower in military service.

If the borrower is a person in military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the lender may, by written agreement with the borrower, postpone for the period of military service, and 3 months thereafter, any part of the monthly payment, which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the obligation within its original maturity. The agreement shall in no way affect the amount of the annual insurance premium which shall continue to be calculated in accordance with the original amortization provisions of the loan.

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.414.

(b) A claim for insurance benefits on a loan secured by other than a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.474 through 203.478. However, the lender may not, except with the approval of the Commissioner, proceed against the security and also make claim under the contract of insurance, but shall elect which method it desires to pursue.

[49 FR 21319, May 21, 1984, as amended at 61 FR 35019, July 3, 1996]

§ 203.474 Maximum claim period.

A claim for insurance benefits on a loan secured by other than a first mortgage shall be filed within one year from the date of default, or within such

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additional period of time as may be approved by the Commissioner.

[49 FR 21319, May 21, 1984]

§ 203.476 Claim application and items to be filed.

The claim for reimbursement on a loan secured by other than a first mortgage shall be made upon an application form prescribed by the Commissioner. The application shall be accompanied by:

(a) The fiscal data pertaining to the loan transaction as required by the fiscal data form;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and the security held, assigned to the Commissioner without recourse of warranty, except that no act or omission of the lender shall have impaired the validity and priority of such security;

(d) Any hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security;

(e) The assignment to the Commissioner of all rights and interests arising under the loan, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) Any title evidence held by the lender;

(g) All property of the borrower held by the lender or to which it is entitled and, if the Commissioner elects to make payments in debentures, all cash held by the lender or to which it is entitled, including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(i) Any additional information or data which the Commissioner may require.

(Approved by the Office of Management and Budget under control number 2502-0051)

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 21319, May 21, 1984; 80 FR 51468, Aug. 25, 2015]

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§ 203.477 Certificate by lender when loan assigned.

At the time of the assignment of the loan, the lender shall certify to the Commissioner that:

(a) The amount stated in the instrument of assignment is actually due and owing on the loan;

(b) There are no offsets of counterclaims thereto, and the financial institution has a good right to assign.

(c) The mortgage transaction did not involve a first mortgage and the mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances other than a first mortgage, or defects which may arise except such liens or other matters as may have been approved by the Commissioner.

[36 FR 34508, Dec. 22, 1971, as amended at 45 FR 33967, May 21, 1980; 49 FR 21320, May 21, 1984]

§ 203.478 Payment of insurance benefits.

(a) *Claim computation, items included.* Upon acceptable assignment of the note and security instruments, the Commissioner shall pay the lender an amount equal to the unpaid principal balance of the loan, plus:

(1) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(2) Any advances made previously under the provisions of the loan instrument and approved by the Commissioner.

(3) Reimbursement for such reasonable collection costs, court costs and attorney's fees as may be approved by the Commissioner.

(4) Reimbursement for premiums paid on any hazard insurance policies held on the property.

(5)(i) If payment is made in cash on a mortgage endorsed for insurance on or before January 23, 2004, an amount equivalent to the debenture interest that would have been earned, as of the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture

interest shall be computed for 30 days or the extended period;

(ii) If payment is made in cash on a mortgage endorsed for insurance after January 23, 2004, debenture interest at the rate specified in § 203.479 from the date specified in § 203.486 to the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the debenture interest shall be computed for 30 days or the extended period.

(b) *Claim computation, items deducted.* If the lender is to receive cash, there shall be deducted from the total of the added items in paragraph (a) of this section any cash held by the lender or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness.

(c) *Method of payment.* Payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(d) *Special provision—payment in debentures.* All of the provisions of §§ 203.479 through 203.487 of this subpart shall be applicable in connection with the payment in debentures of insurance benefits under this subpart.

[36 FR 24508, Dec. 22, 1971, as amended at 71 FR 35994, June 22, 2006; 80 FR 51468, Aug. 25, 2015]

§ 203.479 Debenture interest rate.

(a) Debentures shall bear interest from the date of issue, payable semi-annually on the first day of January and on the first day of July every year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

(b) For mortgages endorsed for insurance after January 23, 2004, if an insurance claim is paid in cash, the debenture interest rate for purposes of calculating such a claim shall be the month-

ly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

[71 FR 35994, June 22, 2006]

§ 203.481 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 203.482 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.483 Forms and amounts of debentures.

Debentures issued under this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

[59 FR 49816, Sept. 30, 1994]

§ 203.484 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semi-annual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 203.486

§ 203.486 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan in accordance with the requirements of § 203.476(c).

§ 203.487 Cash adjustment.

Any difference of less than \$50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

[59 FR 49816, Sept. 30, 1994]

§ 203.488 Sale of interests in insured loans.

No lender may sell or otherwise dispose of any insured loan or group of insured loans, or any partial interest in such loan or loans by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.489 Sale of insured loan to approved lender.

An insured loan may be sold to another approved lender. The seller shall notify HUD of the sale within 15 calendar days, on a form prescribed by HUD and acknowledged by the buyer.

[45 FR 27929, Apr. 25, 1980]

§ 203.491 Effect of sale of insured loan.

When an insured loan is sold to another approved lender, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract, provided that the seller shall not be relieved of its obligation to pay insurance premiums until the notice required by § 203.489 is received by HUD.

[45 FR 27929, Apr. 25, 1980]

§ 203.492 Assignments, pledges and transfers by approved lender.

(a) An assignment, pledge or transfer of an insured loan or group of insured loans, not constituting a final sale, may be made by an approved lender to another approved lender provided the following requirements are met:

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(1) The assignor, pledgor or transferor shall remain the lender of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the lender of record with respect to the rights, benefits and obligations of the lender under the contract of insurance.

(b) An assignment or transfer of an insured loan or group of insured loans may be made by an approved lender to other than an approved lender provided the requirements under paragraphs (a) (1) and (2) of this section are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved lender that:

(i) It has assets of \$100,000 or more; and

(ii) It has lawful authority to hold an insured loan or group of insured loans.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within one year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such loan or group of loans.

(ii) The transferor or assignor shall obtain a sale and transfer of such loan or group of loans to an approved lender.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

§ 203.493 Declaration of trust.

A sale of a beneficial interest in a group of insured loans, where the interest to be acquired is related to all of the loans as an entirety, rather than an interest in a specific loan, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

§ 203.495 Transfers of partial interests.

A partial interest in an insured loan may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortgagee.* The insured loan shall be held by an approved lender which, for the purposes of this section, shall be referred to as the *principal lender*.

(b) *Interest of principal lender.* The principal lender shall retain and hold for its own account a financial interest in the insured loan.

(c) *Qualification for holding partial interest.* A partial interest in an insured loan shall be issued to and held only by:

(1) A lender approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal lender that:

(i) It has assets of \$100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured loan.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal lender shall retain title to the loan and remain the lender of record under the contract of loan insurance.

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal lender with respect to the rights, benefits, and obligations of the lender under the contract of insurance.

(3) The loan documents shall remain in the custody of the principal lender.

(4) The responsibility for servicing the insured loans shall remain with the principal lender.

EXTENSION OF TIME

§ 203.496 Actions to be taken by mortgagee or lender.

With respect to any action required by the mortgagee or lender within a period of time prescribed by this subpart the Commissioner may extend such period.

AMENDMENTS

§ 203.499 Effect of amendments.

The regulations in this subpart may be amended by the Secretary at any time and from time to time, in whole or in part, but such amendment will not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage or loan already insured, and will not adversely affect the interest of a mortgagee on any mortgage or loan to be insured for which either the Direct Endorsement or Lender Insurance mortgagee has approved the mortgagor and all terms and conditions of the mortgage or loan, or the Secretary has issued a firm commitment. In addition, such amendment will not adversely affect the eligibility of specific property if such property is covered by a conditional commitment issued by the Secretary, a certificate of reasonable value issued by the Secretary of Veterans Affairs, or an appraisal report approved by a Direct Endorsement or Lender Insurance underwriter.

[62 FR 30227, June 2, 1997]

Subpart C—Servicing Responsibilities

SOURCE: 41 FR 49736, Nov. 10, 1976, unless otherwise noted.

GENERAL REQUIREMENTS

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but failure to comply will be cause for imposition of a civil money penalty, including a penalty under § 30.35(c)(2), or withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed.

[70 FR 21578, Apr. 26, 2005]