

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Housing—Federal Housing Commissioner****24 CFR Part 203**

[Docket No. FR-3626-F-02]

RIN 2502-AG20

Single Family Mortgage Insurance—Special Forbearance Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule permits the mortgagee and the mortgagor to enter into a special forbearance agreement without obtaining the prior approval of HUD requiring the payment of the arrearage before maturity of the mortgage. It also eliminates the present gap in reimbursement of debenture interest that occurs if the mortgagor files a petition in bankruptcy after entering into a special forbearance agreement. The purpose of this change is to encourage mortgagees to make greater use of special forbearance procedures when the mortgagor is temporarily unable to make full regular mortgage payments. When special forbearance agreements are utilized, but subsequently fail, mortgagees are entitled to collect all unpaid interest on their claim, from the oldest unpaid installment to foreclosure initiation. Generally this provides for inclusion of at least two additional months of interest on the insurance claim reimbursement.

EFFECTIVE DATE: This final rule is effective on December 18, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-1672, or, for hearing and speech impaired, (202) 708-4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This rule revises current HUD regulations governing forbearance procedures in the context of the servicing of FHA insured single-family home mortgage loans. HUD currently has two special forbearance procedures. Under 24 CFR 203.614(a), the mortgagee must obtain prior approval from HUD for the special forbearance agreement to

be valid. A special forbearance agreement with HUD approval may require increased payments prior to mortgage maturity. Under 24 CFR 203.614(b), the mortgagee may reduce or suspend the mortgagor's required payments during the forbearance period without HUD approval, but may not increase payments to recover arrearage until after mortgage maturity. This rule adds a new paragraph (c) to § 203.614, which will permit the mortgagee to reduce the required payments to an amount not less than 50% of the regular mortgage payments for a forbearance period of up to nine (9) months. On expiration of the forbearance period, but no sooner than four (4) months after the execution of the agreement, the mortgagee may, without HUD approval, increase the required payments to not more than one and one-half (1½) times the regular payment amount until all arrearages are repaid.

Limitations

The new procedure contains several limitations to keep arrearages from accumulating to an amount that the mortgagor cannot reasonably be expected to repay before loan maturity. These limitations include:

- The agreement must be executed not later than the due date of the seventh unpaid monthly installment;
- The monthly payments may be reduced but not suspended;
- The period of reduced payments may not exceed nine (9) months;
- The increase in payments may not be required earlier than four (4) months after execution of the agreement;
- The first payment may be any amount mutually agreed upon by the mortgagor and mortgagee, and must be due within 30 days of execution of the agreement; and
- The agreement is not considered a valid special forbearance agreement until the first required payment under the terms of the agreement is made.

If greater forbearance relief is needed, the mortgagee can utilize the existing forbearance procedures, or can provide a less restrictive work out plan under which the mortgagee may not be entitled to the payment of additional note interest on that portion of the claim covered by the special forbearance.

Conditions for New Procedures

The conditions for granting the new form of special forbearance relief are as follows:

- (1) As under the existing regulations, the mortgagor must establish to the satisfaction of the mortgagee that the mortgagor does not own other property subject to an FHA-insured mortgage and

that the default was caused by circumstances beyond the control of the mortgagor.

(2) During the forbearance period, the forbearance agreement must provide for payment of not less than 50 percent of the regular mortgage payments, nor more than the regular mortgage payments. The Secretary, by administrative instruction, may permit a different required minimum percentage, but in no event will it be more than 100 percent of the regular mortgage payment.

(3) The period of reduced payments may not exceed nine (9) monthly payments after execution of the forbearance agreement.

(4) The agreement must provide for an increase in payments, in order to recover arrearage accruing prior to and during the forbearance period. The increase in the payments is to begin no earlier than four (4) months after execution of the agreement.

(5) The increased payments may not exceed one and one-half (1½) times the regular mortgage installments.

(6) The agreement must provide for resumption of the regular mortgage payments after the total amount of arrearage is repaid.

(7) The agreement must be executed no later than the due date of the seventh full unpaid monthly payment.

(8) The agreement must require that the first payment is due within 30 days of the execution of the agreement.

(9) The agreement is not a valid special forbearance agreement until the first required payment under the terms of the agreement is made.

Other Changes

Current regulations have the effect that if State law, bankruptcy, or assignment considerations preclude a mortgagee from initiating foreclosure within 90 days after the mortgagor fails to meet the requirements of a special forbearance agreement, then neither mortgage nor debenture interest is paid on the insurance claim for the period from 90 days after the date of the mortgagor's failure to meet the requirements of a special forbearance agreement until the date foreclosure is initiated (§§ 203.402a and 203.410(a)(3)). This rule eliminates this lapse in interest payments by revising § 203.410(a)(3) to provide that debenture interest payments begin the day after the date to which mortgage interest is computed.

In addition, current regulations do not specifically identify mortgage assignment consideration as a possible reason for delaying foreclosure

initiation; this rule has been expanded to do so.

Section 203.355 has been amended to add paragraph (h), which requires that, if the mortgagor fails to meet the requirements of a special forbearance agreement and the failure continues for a period of 60 days, the mortgagee must initiate foreclosure within the later of nine (9) months after the date of default, or 90 days following the mortgagor's failure to meet the special forbearance requirements.

Finally, the rule makes a conforming revision to § 203.355(c). This section currently requires mortgagees to commence foreclosure within 60 days after the expiration of any prohibition on foreclosure that is found in State law or Federal bankruptcy law when such prohibition did not permit commencement of foreclosure within prescribed time requirements. The rule also applies this 60-day requirement when such prohibitions do not permit the commencement of foreclosure after the mortgagor's failure to meet the requirements of a special forbearance agreement.

Public Comments

The Department published a proposed rule on January 23, 1995 at 60 FR 4391.

Six commenters responded to the proposed rule: one association, three mortgage lenders, one consultant and one provider of legal services. Three of the six generally supported the rule, but recommended certain changes. Another commenter fully agreed with the rule as proposed. Two of the comments took issue with the need for any amendment to the rule, indicating that the existing regulation already authorized some of the proposed rule's features. The Department is persuaded by those comments indicating that the proposed rule may have been too restrictive to encourage widespread use. Consequently, the final rule contains several revisions.

Below is a listing of the comments received and the Department's responses.

1. Two commenters indicated that any "reasonable" arrangement that would be acceptable to the mortgagee should qualify as a special forbearance, and the test of whether the agreement was "reasonable" should rest with a subsequent review of the file. HUD acknowledges that a mortgagee should and does have the flexibility to enter into any reasonable arrangement that is acceptable to that mortgagee to cure a default. However, with respect to such arrangement qualifying as a "special forbearance" agreement entitling the mortgagee to significant additional

amounts on a claim payment, HUD has a responsibility to place such restrictions as are deemed appropriate to safeguard against the possibility of overpayments from the Insurance Funds. With regard to evaluating the appropriateness of the agreement through a post-claim review of the file, the rule is specifically intended to avoid this. If all the requirements of this new special forbearance rule are met, HUD does not intend to second-guess the mortgagee's decision after the fact.

2. One commenter indicated that the criterion requiring payments under the agreement to be not less than 50% had no intrinsic value and therefore should be modified. As the rule specifically provides for the ability of the Commissioner to adjust this criterion at any time through administrative instruction, HUD does not agree that this criterion should be removed. After the Department has had some practical experience with this regulation, a decision will be made as to whether an adjustment to the minimum acceptable payment is advisable.

3. One commenter indicated that requiring the execution of the agreement within four (4) months of delinquency may prove to be too restrictive and therefore counterproductive. The Department is persuaded by this argument and this criterion has been liberalized in the final rule. Agreements which are executed by the due date of the *seventh* unpaid monthly installment will meet the criteria for a valid special forbearance agreement.

4. One commenter indicated that the period during which reduced payments are allowed was too short and did not provide the mortgagee with sufficient flexibility. The Department is persuaded by this comment and has revised the final rule to extend the allowable period of reduced payments from six (6) to nine (9) months.

5. Several commenters indicated in general comments that the final rule could be made more useful if the eligibility criteria were revised to be less restrictive. As indicated above, the Department is persuaded by this general observation as evidenced by language contained in the final rule that eases some of the criteria contained in the proposed rule.

The following is a summary of the revisions contained in the final rule.

(1) The period within which an agreement may be entered has been extended from four (4) months to the due date of the seventh full unpaid installment.

(2) The period the mortgagee may provide forbearance has been extended from six (6) months to nine (9) months.

(3) The period of time the mortgagee must wait after executing the agreement before it can require increased payments has been reduced from six (6) months to four (4) months.

(4) The agreement can allow up to 30 days after execution before the initial payment is required, rather than requiring payment to be made at the time the agreement is executed.

6. Two of the commenters disagreed with the need for this rule, indicating that the existing regulation already enables mortgagees to increase payments under special forbearance agreements without HUD approval. In addition, both of these commenters indicated that the proposed rule would adversely affect the interest of mortgagees with respect to mortgages already insured or approved for insurance, and therefore should be prospective only, under the provisions of § 203.499. HUD has made a determination that the current regulation does not authorize the mortgagee to increase payments under a special forbearance agreement prior to the maturity date without HUD approval. HUD, therefore, disagrees that this rulemaking is unnecessary, and HUD maintains its position that this change is necessary to enable the mortgagee to increase payments under an agreement that qualifies as a "special forbearance" agreement, prior to the loan maturity date. HUD disagrees with the assertion that this rule would have a negative impact on loans already insured. The use of this additional special forbearance provision is completely elective on the part of the mortgagee; furthermore, HUD sees no adverse effect on loans currently insured. To the contrary, HUD believes this additional special forbearance provision provides a significant benefit to the mortgagee. Therefore, it is HUD's position that the prospectivity requirement of § 203.499 is not applicable to this rule.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 (a) and (l) of the HUD regulations, the policies and procedures contained in this rule relate only to loan terms and individual actions involving single-family housing and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to lenders and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would permit, but would not require, use of a special forbearance procedure by mortgagees. In addition, the number of cases to which the procedure would apply is limited.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance program number is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and record keeping requirements, Solar energy.

Accordingly, part 203 of title 24 of the Code of Federal Regulations is amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. In § 203.355, the introductory text of paragraph (a) and paragraph (c) are revised and new paragraph (h) is added, to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Except as provided in paragraphs (b) through (h) of this section, upon default of a mortgage the mortgagee shall take one of the following actions. Such action shall be taken within nine (9) months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or §§ 203.650 through 203.660:

* * * * *

(c) *Prohibiting of foreclosure within time limits.* If assignment consideration under §§ 203.650 through 203.660, 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), and (h) of this section, the mortgagee must commence foreclosure within 60 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 60 days after the expiration of the time during which foreclosure is prohibited.

* * * * *

(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 commence foreclosure within the later of nine (9) months after the date of default or 90 days after the mortgagor's failure to meet the special forbearance requirements.

3. Section 203.402a is revised to read as follows:

§ 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) Assignment consideration under §§ 203.650–203.660;

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

(3) Federal bankruptcy law.

4. In § 203.410, the heading of paragraph (a) is revised and paragraph (a)(3) is revised to read as follows:

§ 203.410 Issue date of debentures.

(a) *Conveyed properties, claims without conveyance, pre-foreclosure sales—* * **

(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.

* * * * *

5. In § 203.614, a new paragraph (c) is added, to read as follows:

§ 203.614 Conditions of special forbearance.

* * * * *

(c) The mortgagee may grant special forbearance relief providing for increased mortgage payments without the approval of the Secretary, subject to the following conditions:

(1) The conditions of paragraph (b)(1) of this section are met;

(2) The agreement is executed not later than the due date of the seventh full unpaid monthly payment;

(3) Within 30 days after the date of the execution of the agreement, the mortgagor must pay an amount agreed upon by the mortgagor and the mortgagee, but not less than the first monthly installment due under the agreement;

(4) The agreement is not valid until the full initial payment is made under the terms of the agreement.

(5) The written special forbearance agreement shall:

(i) Provide for the payment for a period not to exceed nine (9) months after execution of the agreement, of:

(A) Not less than 50 percent of the regular mortgage payments, but not more than the regular mortgage payment; or

(B) Such other percentage as the Secretary, by administrative instruction, may determine, but in no event more than the regular mortgage payment;

(ii) Provide for an increase of payments to not more than one and one-half (1½) times the regular mortgage payments, commencing no sooner than four (4) months after execution of the agreement; and

(iii) Provide for resumption of the regular mortgage payments after the total unpaid amount accruing prior to and during the forbearance period is repaid.

Dated: November 8, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal
Housing Commissioner.*

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