

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 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 mortgage 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 ap-

propriate 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.