

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 approved 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.

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

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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 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.

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(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