

## § 203.491

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:

(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

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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]

#### § 203.501 Loss mitigation.

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department. Such actions include, but are not limited to, deeds in lieu of foreclosure under § 203.357, pre-foreclosure sales under § 203.370, partial claims under § 203.414, assumptions under § 203.512, special forbearance under §§ 203.471 and 203.614, and recasting of mortgages under § 203.616. HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the mortgagor's income, credit and property.

[59 FR 50145, Sept. 30, 1994, as amended at 61 FR 35019, July 3, 1996]

#### § 203.502 Responsibility for servicing.

(a) After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The servicer must fully discharge the servicing responsibilities of