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for participation in the Direct Endorsement program, or the mortgagee requests a creditworthiness determination by the Secretary;

(3) The prospective purchaser is determined to be creditworthy under the standards applicable when a release of the selling mortgagor is intended;

(4) The prospective purchaser assumes personal liability by agreeing to pay the mortgage debt; and

(5) The mortgagee provides the selling mortgagor with a release of personal liability on a form approved by the Secretary.

(b) *Release after 5 years.* (1) If a selling mortgagor is not released under the procedures described in paragraph (a) of this section, either because no request for a creditworthiness determination is submitted under paragraph (a)(1) of this section, or because there is no affirmative determination of creditworthiness under paragraph (a)(3) of this section, then the selling mortgagor is automatically released from any personal liability for payment of the mortgage debt because of section 203(r) of the National Housing Act if:

(i) The purchasing mortgagor has assumed personal liability by agreeing to pay the mortgage debt;

(ii) Five years have elapsed after the assumption; and

(iii) The purchasing mortgagor is not in default under the mortgage at the end of the five-year period.

(2) If the conditions of this paragraph (b) for a release are satisfied, the mortgagee shall provide a written release upon request to the selling mortgagor.

(3) This paragraph (b) only applies to a mortgage originated pursuant to an application by the mortgagor on or after December 1, 1986 on a form approved by the Secretary.

(c) *Mortgagee to provide notice.* A mortgagee shall inform mortgagors (including prospective mortgagors seeking information) about the procedures for release of personal liability by providing a notice approved by the Secretary when required by the Secretary.

[58 FR 42649, Aug. 11, 1993]

§ 203.512 Free assumability; exceptions.

(a) *Policy of free assumability with no restrictions.* A mortgagee shall not impose, agree to or enforce legal restrictions on conveyance, as defined in § 203.41(a)(3) of this part, or restrictions on assumption of the insured mortgage, unless specifically permitted by this part or contained in a junior lien granted to the mortgagee after settlement on the insured mortgage.

(b) *Credit review.* If approval is required by the mortgage, the mortgagee shall not approve the sale or other transfer of all or part of the mortgaged property, or the sale or transfer of a beneficial interest in a trust owning all or part of the property, whether or not any person acquires personal liability under the mortgage in connection with the sale or other transfer, unless:

(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by the Secretary;

(2) The selling mortgagor retains an ownership interest in the property; or

(3) The transfer is by devise or descent.

(c) *Investors and secondary residences.* The mortgagee shall not approve the sale of other transfer or mortgaged property to a person who cannot be approved as a substitute mortgagor as provided in § 203.258 of this part because the property will not be a primary residence or a secondary residence permitted by that section.

(d) *Due-on-sale clause.* Each mortgage shall contain a due-on-sale clause permitting acceleration, in a form prescribed by the Secretary. If a sale or other transfer occurs without mortgagee approval and a prohibition in paragraphs (b) or (c) of this section applies, a mortgagee shall enforce this section by requesting approval from the Secretary to accelerate the mortgage, provided that acceleration is permitted by applicable law. The mortgagee shall accelerate if approval is granted. This paragraph applies only if the application by the mortgagor on a form approved by the Secretary is dated on or after December 1, 1986.

[58 FR 42649, Aug. 11, 1993; 59 FR 15112, Mar. 31, 1994]

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PAYMENTS, CHARGES AND ACCOUNTS

§ 203.550 Escrow accounts.

(a) It is the mortgagee's responsibility to make escrow disbursements before bills become delinquent. Mortgagees must establish controls to insure that bills payable from the escrow fund or the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for items payable from the escrow account must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. The mortgagee shall use the procedures set forth in § 3500.17 of this title, implementing Section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609), to compute the amount of the escrow, the methods of collection and accounting, and the payment of the bills for which the money has been escrowed.

(b) [Reserved]

(c) In the case of escrow accounts created for purposes of § 203.52 or § 234.64 of this chapter, mortgagees may estimate escrow requirements based on the best information available as to probable payments that will be required to be made from the account on a periodic basis throughout the period during which the account is maintained.

(d) The mortgagee shall not institute foreclosure when the only default of the mortgagor occupant is a present inability to pay a substantial escrow shortage, resulting from an adjustment pursuant to this section, in a lump sum.

(e) When the contract of mortgage insurance is terminated voluntarily or because of prepayment in full, sums in the escrow account to pay the mortgage insurance premiums shall be remitted to HUD with a form approved by the Secretary for reporting the voluntary termination of prepayment. Upon prepayment in full sums held in escrow for taxes and hazard insurance shall be released to the mortgagor promptly.

(Approved by the Office of Management and Budget under control number 2502–0474)

[41 FR 49736, Nov. 10, 1976, as amended at 57 FR 9611, Mar. 19, 1992; 57 FR 27927, June 23, 1992; 59 FR 53901, Oct. 26, 1994; 60 FR 8812, Feb. 15, 1995]

§ 203.552 Fees and charges after endorsement.

(a) The mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement only as provided below. The mortgagee may collect these fees or charges from the mortgagor only to the extent that the mortgagee is not reimbursed for such fees by HUD.

(1) Late charges as set forth in § 203.25;

(2) Charges for processing or reprocessing a check returned as uncollectible; (Where bank policy permits, the mortgagee must deposit a check for collection a second time before assessing a bad check charge);

(3) Fees for processing a change of ownership of the mortgaged property;

(4) Fees and charges for arranging a substitution of liability under the mortgage in connection with the sale or transfer of the property;

(5) Charges for processing a request for credit approval of an assumptor or substitute mortgagor;

(6) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(7) Charges for modification of the mortgage involving a recorded agreement for extension of term or reamortization;

(8) Fees and charges for processing a partial release of the mortgaged property;

(9) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals pursuant to § 203.368(e) and cost of advertising pursuant to § 203.368(h)) when a case has been referred for foreclosure in accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account. (No attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure.)

(10) The service charge provided for by § 203.23(c) and escrow charges in accordance with § 203.23(a);

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