

shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b) shall apply.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 of the Act (12 U.S.C. 1715z-7), the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage; or

(ii) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(2) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(3) If such defaults, as defined in paragraph (b) of this section, continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(4) Except for mortgages insured under section 232 of the Act, for the purposes of paragraph (b) of this section, the date of default shall be considered as:

(i) The date of the first uncorrected failure to perform a covenant or obligation; or

(ii) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(5) For mortgages insured under section 232 of the Act, for purposes of this section, the date of default shall be considered as:

(i) The first date on which the borrower has failed to pay the debt when

due as a result of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the regulatory agreement or security instrument; or

(ii) The date of the first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

[76 FR 24370, May 2, 2011, as amended at 77 FR 55135, Sept. 7, 2012]

#### **§ 207.256 Notice to the Commissioner of default.**

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(a)(3) or (b)(3), the mortgagee must, within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

[76 FR 24370, May 2, 2011]

#### **§ 207.256a Reinstatement of defaulted mortgage.**

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

[76 FR 24370, May 2, 2011]

#### **§ 207.256b Modification of mortgage terms.**

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.