

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Mortgage Insurance—Loss Mitigation Procedures****24 CFR Parts 203 and 206****[Docket No. FR-4032-I-01]****RIN 2502-AG72****AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.**ACTION:** Interim rule.

SUMMARY: This interim rule amends 24 CFR part 203 to eliminate the Mortgage Assignment Program and to provide that HUD may: recompense mortgagees for using mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure; pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage; and accept assignment of a mortgage which the mortgagee has modified to cure the default.

DATES: Effective Date: August 2, 1996. Comments due date: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708-1672, or, TTY for hearing and speech impaired, (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act Statement**

The Department is seeking approval of the information collection requirements contained in § 203.605 by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB control number will be published in the Federal Register upon approval. An agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background*Summary of Legislative Changes*

This interim rule implements section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104-99, approved January 26, 1996) (Downpayment Act), which amended sections 204 and 230 of the National Housing Act. The amendment of section 230 eliminated the current HUD programs for Temporary Mortgage Assistance Payments and Assignment of Mortgages at §§ 203.640 - 203.660 of 24 CFR. This amendment did not become effective until the passage of The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996). However, this Appropriations Act provided that mortgagors who had applied for relief under the Assignment Program before April 26, 1996 will be governed by the requirements of section 230 before the amendments made by the Downpayment Act.

To continue to provide foreclosure alternatives for mortgagors, the Downpayment Act amended sections 204 and 230 of the National Housing Act to promote foreclosure alternatives and loss mitigation tools to be used by mortgagees. Section 204 was amended to provide that the Secretary may recompense mortgagees for their actions to provide mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure. Section 230 was amended to provide that the Secretary may pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage. In addition, Section 230 was amended to provide that the Secretary may accept assignment of a mortgage which the mortgagee has modified to cure the default and where repooling of the loan is not possible. This procedure is to be distinguished from forbearance relief for defaulted loans, as well as from the former Mortgage Assignment Program. It should be noted that the Downpayment Act permitted, but did not require, the Secretary to establish these partial claim and assignment procedures. Further, the Downpayment Act provided that no decision by the Secretary to exercise or forego exercising his authority under section 230 and the new authority under section 204 shall be subject to judicial review.

Overview of HUD's Approach

The techniques to be employed under HUD's new foreclosure alternatives/loss mitigation approach implemented by this rule will include special forbearance plans, loan modifications, partial claims, preforeclosure sales, deeds in lieu of foreclosure, and similar tools. These approaches generally fall into two broad categories—(a) those which (if utilized successfully) would result in curing the default and retaining homeownership, and (b) those which would result in the relinquishment of homeownership, by means of a sale to a third party or by a voluntary conveyance of the property by deed in lieu of foreclosure.

The Department has decided to implement a comprehensive approach toward promoting alternatives to foreclosure, as well as loss mitigation, which enhances lender flexibility in dealing with the circumstances in which homeowners find themselves. This approach describes a series of servicing actions and strategies that may be used singly or in combination to meet those objectives; provides insurance benefits to lenders that evaluate mortgagors with delinquent and defaulted loans and choose appropriate steps which—when successful—result in outcomes other than foreclosure of the mortgage; and establishes the groundwork for Departmental monitoring of lenders' efforts.

End of Assignment Program

In October, 1995, the General Accounting Office (GAO) issued a report to Congress regarding HUD's Mortgage Assignment Program. After analyzing over 68,000 mortgages assigned to HUD since 1989, the GAO estimated that the loss to FHA per assigned mortgage would be \$49,000, compared to the estimated \$27,000 FHA would have lost had the loan not entered the Assignment Program. The GAO noted that to offset these losses, FHA was required to charge higher mortgage insurance premiums to new mortgagors. As a result of the GAO report, Congress, as discussed above, has amended section 230 of the National Housing Act to end the Mortgage Assignment Program with respect to the intake of new applicants into that program. Therefore, references to the Assignment Program are amended or removed accordingly in the following sections: 203.350, 203.355, 203.402a, 203.438, 203.500, 203.604, 203.606, 203.640-203.660, and 203.664-203.666.

Early Default Counseling

The Department emphasizes that early intervention coupled with the use of default counseling are effective techniques for curing defaulted mortgages. A successful servicing strategy by a mortgagee takes into consideration each defaulted mortgage individually. Based on the circumstances involved, the mortgagee executes a plan which will eliminate the default and prevent a foreclosure. In an effort to clarify misunderstandings of various alternatives available to homeowners whose mortgages are in a defaulted status, and to reduce delays in obtaining assistance, HUD Handbook 4330.1 REV-5, Administration of Insured Home Mortgages, continues to require lenders to refer those homeowners to HUD-approved housing counseling agencies early in the default period.

Actions To Promote Foreclosure Alternatives/Loss Mitigation

Section 407(a) of the Downpayment Act amended section 204(a) of the National Housing Act to provide that HUD may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default. These actions may include special forbearance, loan modification, and/or deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by HUD.

The current regulations already provide for most of these foreclosure alternative or loss mitigation actions. Therefore, § 203.501 of the regulations, governing loss mitigation, is amended to provide cross references to these various foreclosure alternative actions available to mortgagees. To clarify that the claim file requirements at § 203.365(c) include claims involving these loss mitigation actions, a new § 203.605 is added to specify that mortgagees must document that they have considered—beginning no later than when three full monthly installments due on the mortgage are unpaid, and continuing with monthly reevaluations while the loan remains in default—all loss mitigation options to determine which, if any, are appropriate before initiating foreclosure. In addition, a new § 203.412 is added to the regulations to provide that the Secretary may pay insurance benefits to encourage mortgagees to pursue these loss mitigation techniques.

Some of the provisions to promote loss mitigation are given a delayed implementation date in the text of this

interim rule to enable the Department to consider any comments before making them effective in a final rule. Thus, the reduction from nine to six months for taking action upon default of a mortgage in § 203.355, and the amendment to the provision in § 203.402(f) for varying the percentage of foreclosure costs or the costs of acquiring a property that are reimbursed, are made to apply only after March 1, 1997. Each of these changes is discussed below in this preamble.

In certain cases foreclosure may be avoided where the mortgagor's sale of the property is facilitated by the assumption of the mortgage by a credit-worthy, owner-occupant purchaser. Although not included in this interim rule, procedures to facilitate the use of assumptions as a type of "preforeclosure sale" are being considered by HUD for future implementation. Finally, this rule amends the regulations to provide for the increased flexibility in the use of these foreclosure alternative tools, as described below.

Reduction of Time for Taking Action

Concerning the reduction of the foreclosure initiation time frame from nine months to six months, in 1991 the Department proposed to reduce the time frame for lenders to initiate foreclosure from twelve months to six months (56 Fed. Reg. 19212, April 25, 1991). Public comments received indicated that the six-month deadline could not reasonably be met due to several reasons including compliance with the HUD Assignment Program, administrative matters, State law requirements regarding notice, and the desire to encourage workout or forbearance agreements with mortgagors.

The Department believes that the biggest obstacle to initiating foreclosure within six months was the requirement to process borrower applications for acceptance into the HUD Assignment Program. Since the Assignment Program is no longer an option for those mortgagors who did not apply for assignment relief on or before April 25, 1996, HUD now believes that a shortened time frame is workable. As evidenced by this rule, HUD also desires to encourage workout and forbearance agreements with mortgagors. However, HUD believes that early intervention is necessary for effective loss mitigation and that a workout must be established before six months of arrearage has accumulated, wherever possible.

With regard to State legal notice requirements, there should not be a problem meeting the six month time frame, because under the new procedures, HUD will generally permit mortgagees to make timely preparations

to initiate foreclosure, even while simultaneously considering the various loss mitigation tools. Also, under current regulations the foreclosure initiation time frame is stayed when the mortgagor has entered into a special forbearance agreement or has commenced participation in the pre-foreclosure sales procedure.

The Department specifically requests public comments on this proposed time frame. The rule expressly provides for a delayed implementation of the six-month time limit to permit notice and comment on this change.

Varying the Percentage of Costs Reimbursed

Section 203.402(f) currently provides for $\frac{2}{3}$ reimbursement of foreclosure and acquisition costs on mortgage insurance claims. This regulation would amend that section to allow HUD to vary the percentage of reimbursement by administrative issuance such as a Mortgagee Letter. The percentage may be based on individual mortgagee performance in mitigating loss. The Department specifically requests public comments on this proposed change in reimbursement for foreclosure costs. The rule has expressly provided for a delayed implementation of the amendment in order to provide for notice and comment on this change. The same change has also been incorporated into the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(ii).

1. Special Forbearance

Section 203.614 currently provides the conditions under which mortgagees may enter into special forbearance agreements with mortgagors. This interim rule amends § 203.614 to provide lenders with more flexibility in administering special forbearance, with the exception that partial claims will not be permitted when forbearance is extended for more than 18 months. Rather than including requirements in the rule, HUD will provide special forbearance guidelines in Mortgagee Letters and handbooks. A statutory requirement remains, pursuant to section 204(a) of the National Housing Act, that a default must be due to circumstances beyond the mortgagor's control for additional note rate interest to be paid should a mortgage insurance claim be filed after an unsuccessful special forbearance agreement.

In addition, § 203.471, which provides for the conditions under which mortgagees may enter into special forbearance agreements in the case of 203(k) rehabilitation loans, is amended to be consistent with the amendment to

§ 203.614. Finally, as noted above, a new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in entering into special forbearance agreements under § 203.614. At this time, HUD intends to issue a Mortgagee Letter specifying that this amount will be \$100.

2. Partial Claims

Section 407(b) of the Downpayment Act amended section 230(a) of the National Housing Act to provide that the Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a defaulted single family mortgage. The amended section 230(a) provides that such payment shall be in an amount determined by the Secretary, and shall not exceed an amount equivalent to 12 monthly mortgage payments plus any costs related to the default that are approved by the Secretary. In addition, the amended section 230(a) provides that the mortgagor shall agree to repay this amount to the Secretary, and that the Secretary may pay the mortgagee in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

New §§ 203.371 and 203.414 are added to the regulations to provide that the mortgagee may apply for a partial claim after a period of forbearance. The partial claim will be in the amount of the arrearage accumulated during the forbearance period. The lender shall apply this amount to the mortgage to bring it current and the mortgagor shall be required to execute a subordinate mortgage in favor of the Secretary in the amount of the partial claim. The forbearance period may be extended until the arrearage equals the equivalent of 12 monthly mortgage payments. The equivalent of twelve monthly payments for mortgages with varying monthly payments, such as adjustable rate mortgages (ARMS), graduated payment mortgages (GPMS) and growing equity mortgages (GEMS), will be calculated by multiplying 12 times the monthly mortgage payment due on the date of default. The Department expects to issue guidelines to assure that such forbearances do not extend beyond 18 calendar months. Similarly, guidelines will provide that mortgagees may file a partial claim only after the borrower has been delinquent for at least 4 months. Mitigation of losses through forbearance with a subordinate mortgage would not be available to borrowers who had the financial capacity to modify the mortgage or obtain a new refinanced

mortgage. Nor would this approach be available to a mortgagor who could not make at least a full monthly mortgage payment after the forbearance period.

It is expected that repayment terms of the subordinate mortgage will vary depending on the income and debts of the mortgagor. The subordinate mortgage may call for repayment commencing at a future date before maturity of the insured mortgage, or may not require repayment until a transfer of ownership of the property or payoff of the insured mortgage. HUD guidelines will likely specify that subordinate mortgages must be interest free.

Mortgagees can file for a partial claim under the new § 203.414 if the mortgagor is able to resume full monthly payments, but not pay off the arrearage. The claim amount will be the amount of the payments in arrears, including costs related to the default as established by HUD. The new regulation also permits the Secretary to require the mortgagee to be responsible for servicing the subordinate mortgage and provides that servicing mortgagees may be compensated for activities that they perform on behalf of the Secretary.

3. Modifications/Recastings

Mortgagees currently have the authority under § 203.616 of the regulations to modify defaulted mortgages, in certain cases, for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage, or over a term extending not more than 10 years beyond the original maturity date. In most cases, mortgagees cannot utilize this authority because of secondary mortgage market restrictions. Approximately 95% of FHA-insured mortgages are pooled in Government National Mortgage Association (Ginnie Mae) mortgage backed securities. The pool requirements prevent the mortgagee from keeping the mortgage in the pool if the terms of the mortgage are modified. Thus, to modify the terms of the mortgage, Ginnie Mae issuers must buy the mortgage out of the Ginnie Mae pool.

Ginnie Mae requirements generally have prevented the repooling of a modified mortgage if more than 24 months have elapsed since the date of the first scheduled payment under the mortgage. To facilitate FHA's loss mitigation efforts, Ginnie Mae has agreed to permit the removal of mortgages that are 90 days or more past due from Ginnie Mae pools so that the mortgages can be modified and repooled using the date of modification of the

mortgages as the origination date.

Ginnie Mae will provide its issuers with specific instructions and requirements for this process. Therefore, HUD encourages mortgagees to make increased use of loan modifications or recastings to avoid foreclosure and will shortly provide detailed guidance in a Mortgagee Letter. A new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in modifying or recasting the mortgage and repooling it. The payment would include reimbursement for any necessary title examination and/or title insurance policy endorsement.

In addition, § 203.616 of the regulations is being amended to allow recasting of mortgages even where the mortgage is not in default, by agreement of the parties, although loss mitigation claims are permitted only with respect to mortgages in default. This amendment will allow willing mortgagees, especially state or local housing authorities or portfolio lenders, to recast a mortgage where there may be an imminent default if the mortgage is not recast, but where no default has yet occurred. This procedure, in turn, can prevent adverse impacts on mortgagors' credit ratings. A conforming amendment is made to § 203.342. The authority to allow recasting of mortgages where the mortgage is not in default is based on the Secretary's inherent broad authority to operate the insurance programs, and is not based on the authority contained in sections 204 or 230 of the National Housing Act, as amended. Those two sections generally refer only to mortgages in default. It should be noted that, pursuant to the National Housing Act, if a mortgage insurance claim is eventually filed, the unpaid principal balance paid on the claim will be based on the modified amount only where there had been a default caused by circumstances beyond the mortgagor's control, as defined by the Secretary.

In rare circumstances, the mortgagee may not be able to repool the modified or recast mortgage. In such situations, HUD will now be able to approve the assignment to HUD of a mortgage modified after default. Section 407(b) of the Downpayment Act amended section 230(b) of the National Housing Act to provide that HUD may accept assignment of a mortgage if the mortgage was in default and the mortgagee has modified the mortgage to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at interest rates not exceeding current market interest rates. HUD is also required to arrange for servicing of the assigned mortgage by

a mortgagee, which may include the assigning mortgagee.

Section 203.350 of the regulations is amended to provide for assignment of mortgages under the requirements just noted, and § 203.404 of the regulations is amended to provide for the amounts the mortgagee will be reimbursed on such an assignment claim.

4. Pre-foreclosure Sales

Section 203.370 of the regulations, which provides for pre-foreclosure sales, is amended to remove the reference to the now obsolete Assignment Program. Section 203.402 of the regulations currently provides in paragraphs (l) and (s) that HUD will reimburse the mortgagee for the costs of an appraisal and a title search. Section 203.402(t) provides HUD will pay the mortgagee an administrative fee, as authorized by the Secretary, for the mortgagee's role in facilitating a successful pre-foreclosure sale. Presently, HUD is reimbursing mortgagees for reasonable and customary costs of the appraisal and title search, and \$1,000 as the administrative fee for each successful pre-foreclosure sale. The selling mortgagor is also paid a consideration from gross sales proceeds of up to \$1,000, depending on the length of time it takes to close the sale. HUD intends to continue these reimbursement amounts for the present, although they are subject to change in the future.

5. Deeds in Lieu of Foreclosure

Section 203.402(p) of the regulations currently provides that in a conveyance claim the Secretary will reimburse the mortgagee an amount approved by the Secretary that was paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure. This amount is currently a maximum of \$500. This interim rule amends § 203.402(p) to provide that the Secretary may also pay the mortgagee an administrative fee for its role in facilitating a successful deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed \$250. Also, this rule amends § 203.402(s) to clarify that, as part of a conveyance claim, HUD will reimburse the mortgagee for the cost of a title search involved in determining whether it is feasible to accept a deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed \$250. This rule also amends the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(i) to conform to the revised language of § 203.402(s).

III. Other Matters

Regulatory Planning and Review

This interim rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Most of the economic impact of the interim rule will affect the Department, which stands to benefit from the successful implementation of the loss mitigation techniques addressed by the interim rule.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, since the interim rule involves primarily relationships between the Department and private entities.

Executive Order 12606, The Family

HUD has determined that this interim rule would have only an indirect impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family*, because it would assist mortgagors in maintaining ownership of their properties. To the extent such mortgagors consist of families, the impact would be beneficial. As such, no further review is necessary.

Justification for Interim Rulemaking

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the Act) directs the Department to issue interim regulations to implement section 407 of the Downpayment Act within 30 days of the date of enactment of the Act.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, parts 203 and 206 of title 24 of the Code of Federal Regulations are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.342 is revised to read as follows:

§ 203.342 Recasting of mortgage.

If a mortgage is recast pursuant to § 203.616 subsequent to a finding by the mortgagee that the default was due to circumstances beyond the mortgagor's control, as defined by HUD, the principal amount of the mortgage, as modified, shall be considered to be the "original principal balance of the mortgage" as that term is used in § 203.401.

§ 203.350 [Removed]

3. In § 203.350, the following are removed:

- a. The "Effective Date Note (1)";
- b. The "Effective Date Note (2)";
- c. The second undesignated center heading "ASSIGNMENT OF MORTGAGE";
- d. The "Effective Date Note (3)";
- e. All text of the second version of § 203.350, which includes paragraphs (a) through (d) and the information collection parenthetical; and
- f. The FR source "[52 FR 6914, Mar. 5, 1987]."

3a. In the remaining § 203.350, the section heading and paragraph (a) are revised, to read as follows:

§ 203.350 Assignment of mortgage.

(a) *Assignment of modified mortgages pursuant to section 230, National Housing Act.* HUD may accept an assignment of any mortgage covering a one-to-four family residence if the following requirements are met:

- (1) The mortgage was in default;
- (2) The mortgagee has modified the mortgage under § 203.616 to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at an interest rate not exceeding current market interest rates; and
- (3) Such other conditions that HUD may prescribe, which may include the requirement that the mortgagee continue to be responsible for servicing the mortgage.

* * * * *

4. In § 203.355:

- a. The introductory text of paragraph (a) and paragraph (a)(2) are revised;
- b. Paragraphs (a)(3) through (a)(6) are added; and
- c. Paragraphs (b), the introductory text of paragraph (c) and the introductory text of paragraph (g) are revised; and
- d. Paragraph (h) is added, to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (h) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345 or 203.346. For mortgages where the date of default is on or after March 1, 1997, the mortgagee shall take one of the following actions within six months of the date of default or within such additional time approved by HUD or authorized by §§ 203.345 or 203.346:

* * * * *

(2) Enter into a special forbearance agreement under § 203.614;

(3) Complete a refinance of the mortgage under § 203.43(c);

(4) Complete a modification of the mortgage under § 203.616;

(5) Complete an assumption under § 203.512; or

(6) Commence foreclosure.

(b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should

have been discovered, to be vacant or abandoned; but no later than the number of months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606.

(c) *Prohibition of foreclosure within time limits.* If the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, or within the time limit described in paragraph (a) of this section, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed in lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

* * * * *

(h) *Special forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under § 203.614 and the failure continues for 60 days, the mortgagee must commence foreclosure within the time limit described in paragraph (a) of this section or 90 days after the mortgagor's failure to meet the special forbearance requirements.

§ 203.370 [Amended]

5. In § 203.370, paragraph (c)(3) is removed, and paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(3) and (c)(4).

6. A new § 203.371 is added before the undesignated center heading "CONDITION OF PROPERTY", to read as follows:

§ 203.371 Partial claim.

(a) *General.* Notwithstanding the conveyance, sale or assignment requirements for payment of a claim elsewhere in this part, HUD will pay partial FHA insurance benefits to mortgagees after a period of forbearance, the maximum length of which HUD will prescribe, and in accordance with this section.

(b) *Requirements.* The following conditions must be met for payment of a partial claim:

(1) The mortgage has been delinquent for at least 4 months or such other time prescribed by HUD;

(2) The amount of the arrearage has not exceeded the equivalent of 12 monthly mortgage payments;

(3) The mortgagor is able to resume making full monthly mortgage payments;

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time specified by HUD; and

(5) The mortgagor is not financially able to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under § 203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments required by paragraph (c) of this section.

7. In § 203.402, paragraphs (f), (p) and (s) are revised to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or \$75, whichever is the greater. For mortgages insured on or after March 1, 1997, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner

that such extra costs are over and above those customarily incurred in the area.

* * * * *

(p) An amount approved by HUD and paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure and, if authorized by HUD, an administrative fee approved by HUD paid to the mortgagee for its role in facilitating a successful deed in lieu of foreclosure, not to be subject to the payment of debenture interest thereon.

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by HUD, to determine the status of a mortgagor meeting all other criteria for approval to participate in the pre-foreclosure sale procedure, or to determine if a mortgagor meets the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure.

* * * * *

§ 203.402a [Amended]

8. In § 203.402a, paragraph (b)(1) is removed and paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2).

9. In § 203.404, paragraph (a)(3) is revised, and new paragraphs (a)(5) and (a)(6) are added, to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(a) * * *

(3) Reimbursement for such costs and attorney's fees as HUD finds were properly incurred in connection with the defaulted mortgage and its modification and assignment to HUD.

* * * * *

(5) An administrative fee to the mortgagee for modifying the mortgage.

(6) A fee for servicing the mortgage assigned to HUD, if HUD requires such servicing.

* * * * *

10–11. New §§ 203.412 and 203.414 are added before the undesignated center heading "CERTIFICATE OF CLAIM", and § 203.413 is reserved, to read as follows:

§ 203.412 Payment for foreclosure alternative actions.

Notwithstanding the conveyance, sale, or assignment requirements for payment of a claim elsewhere in this part, HUD may pay the mortgagee, in accordance with procedures prescribed by HUD, for the following foreclosure alternative actions, in such amounts as HUD determines:

(a) Assumptions under § 203.512;

(b) Special forbearance under §§ 203.471 and 203.614;

(c) Recasting or modification of defaulted mortgages under § 203.616, where the mortgagee is not reimbursed under § 203.405(a);

(d) Refinancing under § 203.43(c).

§ 203.413 [Reserved]

§ 203.414 Amount of payment—partial claims.

(a) *Claim amount.* Where a claim for partial insurance benefits is filed in accordance with § 203.371, the amount of the insurance benefits shall consist of the arrearage accumulated during the forbearance period, not to exceed an amount equivalent to 12 monthly mortgage payments, and any costs prescribed by HUD related to the default.

(b) *Servicing fee.* The claim may also include a payment for activities, such as servicing the subordinate mortgage, which HUD may require.

12. In § 203.438, paragraph (c) is revised to read as follows:

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

(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.

13. Section 203.471 is revised to read as follows:

§ 203.471 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by the Secretary, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by the Secretary.

14. In § 203.473 paragraph (a) is revised to read as follows:

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.414.

* * * * *

15. Section 203.500 is revised to read as follows:

§ 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 a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee commence foreclosure or acquisition of a property until the requirements of this subpart have been followed.

16. Section 203.501 is amended by adding at the end of the section the following two sentences:

§ 203.501 Loss mitigation.

* * * 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.

17. In § 203.552, paragraph (a) introductory text is revised to read as follows:

§ 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 in this paragraph (a). The mortgagee may not collect these fees or charges from the mortgagor if the mortgagee has been or will be reimbursed by the Secretary for the services for which the fees or charges are assessed.

* * * * *

§ 203.604 [Amended]

18. In § 203.604, paragraphs (e)(2) (iii) and (iv) are removed, and paragraph (e)(2)(v) is redesignated as paragraph (e)(2)(iii).

19. A new § 203.605 is added to read as follows:

§ 203.605 Loss mitigation evaluation.

No later than when three full monthly installments due on the mortgage are unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided at § 203.501 to determine which, if any, are appropriate, and shall reevaluate monthly thereafter. The mortgagee shall maintain documentation of such evaluations. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in

the claim file under the requirements of § 203.365(c).

20. In § 203.606, paragraph (a) is amended by adding at the end the following sentence, and the introductory text of paragraph (b) is revised, to read as follows:

§ 203.606 Pre-foreclosure review.

(a) * * * In addition, prior to initiating any action required by law to foreclose the mortgage, the mortgagee shall notify the mortgagor in a format prescribed by the Secretary that the mortgagor is in default and the mortgagee intends to foreclose unless the mortgagor cures the default.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without the delay in foreclosure required by paragraph (a) of this section:

* * * * *

21. Section 203.614 is revised to read as follows:

§ 203.614 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by HUD, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by HUD.

22. Section 203.616 is revised to read as follows:

§ 203.616 Recasting of mortgage.

The mortgagee may modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or a term not exceeding 360 months. The

mortgagee must notify HUD of such modification in a format prescribed by HUD within 30 days of the execution of the modification agreement.

§§ 203.640 through 203.660 [Removed]

23. All versions of §§ 203.640 through 203.660 are removed.

24. Section 203.664 is revised to read as follows:

§ 203.664 Processing defaulted mortgages on property located on Indian land.

Before a mortgagee requests that the Secretary accept assignment under § 203.350(b) of a mortgage insured pursuant to section 248 of the National Housing Act (§ 203.43h), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

25. Section 203.665 is revised to read as follows:

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

Before a mortgagee requests the Secretary to accept assignment under § 203.350(c) of a mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

26. In § 203.666 paragraph (b) is revised, and paragraphs (c) and (d) are removed, to read as follows:

§ 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians.

* * * * *

(b) *Claims through assignment.* Before a mortgagee requests the Secretary to

accept assignment under § 203.350(d) the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

27. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-1720; 42 U.S.C. 3535(d).

28. In § 206.129, paragraphs (d)(2)(i) and (d)(2)(ii) are revised to read as follows:

§ 206.129 Payment of claim.

* * * * *

(d) * * *

(2)(i) Items listed in § 203.402 (a), (b), (c), (d), (e), (g), (j), and (s), and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or \$75, whichever is the greater. For mortgages insured after March 1, 1997, HUD may reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as HUD shall prescribe.

* * * * *

Dated: June 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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