

## § 203.321

### § 203.321 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent periodic MIP or open-end insurance charge shall cease and all rights of the mortgagor and mortgagee shall be terminated, except as otherwise provided in this part.

[48 FR 28807, June 23, 1983]

#### DEFAULT UNDER MORTGAGE

### § 203.330 Delinquency and default.

A mortgage account is delinquent any time a payment is due and not paid. If the mortgagor fails to make any payment, or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this part.

[41 FR 49734, Nov. 10, 1976]

EFFECTIVE DATE NOTE: At 71 FR 16234, Mar. 31, 2006, §203.330 was revised, effective May 1, 2006. For the convenience of the user, the revised text is set forth as follows:

### § 203.330 Definition of delinquency and requirement for notice of delinquency to HUD.

(a) A mortgage account is delinquent any time a payment is due and not paid.

(b) Once each month on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages insured under this part that were delinquent on the last day of the month, or that were reported as delinquent the previous month. The report shall be made in a manner prescribed by HUD.

### § 203.331 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after—

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) 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.

EFFECTIVE DATE NOTE: At 71 FR 16234, Mar. 31, 2006, §203.331 was revised, effective May 1, 2006. For the convenience of the user, the revised text is set forth as follows:

## 24 CFR Ch. II (4–1–06 Edition)

### § 203.331 Definition of default, date of default, and requirement of notice of default to HUD.

(a) *Default.* If the mortgagor fails to make any payment or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

(b) *Date of default.* For the purposes of this subpart, the date of default shall be considered as 30 days after:

(1) The first uncorrected failure to perform any obligation under the mortgage; or

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

(c) *Notice of default.* Once each month, on a day prescribed by HUD, the mortgagee shall report to HUD all mortgages that were in default on the last day of the month, or that were reported as in default the previous month. The report shall be made in a manner prescribed by HUD.

(d) *Number of days in month.* For the purposes of this section, each month shall be considered to have 30 days.

### § 203.332 Notice of delinquency.

Once each month the mortgagee shall report or cause to be reported all mortgages insured under this part which are 90 or more days delinquent and concerning the status of all mortgages which were reported as 90 or more days delinquent the previous month. Such reports shall be made on a form approved by the Commissioner.

[41 FR 49734, Nov. 10, 1976]

EFFECTIVE DATE NOTE: At 71 FR 16234, Mar. 31, 2006, §203.332 was removed and reserved, effective May 1, 2006.

### § 203.333 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagor pays to the mortgagee such expenses as the mortgagee has incurred in connection with the foreclosure proceedings and the mortgagee gives written notice of reinstatement to the Commissioner.

## CONTINUATION OF INSURANCE

**§ 203.340 Special forbearance.**

(a) If the conditions of §203.614 are met and special forbearance relief is granted pursuant to that section, the contract of insurance shall continue in force except as otherwise provided in this subpart.

(b) The contract of insurance shall continue in force, except as otherwise provided in this subpart, when the conditions of this section which were effective prior to January 1, 1977, have been met and special forbearance relief is granted pursuant thereto prior to January 1, 1977.

[41 FR 49735, Nov. 10, 1976]

**§ 203.341 Partial claim.**

If the conditions of §203.371 are met and a partial claim is paid pursuant to that section, the contract of insurance shall continue in force, except as otherwise provided in this subpart.

[62 FR 60129, Nov. 6, 1997]

**§ 203.342 Mortgage modification.**

If a mortgage is recast pursuant to §203.616, 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.

[62 FR 60129, Nov. 6, 1997]

**§ 203.343 Partial release, addition or substitution of security.**

(a) Except as provided in §203.389(n), a mortgagee shall not release the security or any part thereof, while the mortgage is insured, without the prior consent of the Commissioner.

(b) A mortgagee may, with the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions:

(1) The mortgagee obtains a good and valid first lien on the property to which the dwelling is removed.

(2) All damages to the structure are repaired without cost to HUD.

(3) The property to which the dwelling is removed is in an area known to be reasonably free from natural hazards or, if in a flood zone, the mort-

gagor will insure or reinsure under the Federal Flood Insurance Program.

(c) A mortgagee may, without the prior consent of the Commissioner, accept an addition to, or substitution of, security for the purpose of removing the dwelling to a new lot under the following conditions.

(1) The dwelling has survived an earthquake or other disaster with little damage, but continued location on the property might be hazardous.

(2) The conditions stated in paragraph (b) of this section exist.

(3) Immediately following the emergency removal the mortgagee notifies the Commissioner of the reasons for removal.

[41 FR 49735, Nov. 10, 1976]

FORBEARANCE RELIEF FOR MILITARY  
PERSONNEL**§ 203.345 Postponement of principal payments—mortgagors in military service.**

In addition to the special forbearance relief afforded by §§203.340 through 203.342, if the mortgagor is a person in the military service (as defined in the Soldiers' and Sailors' Civil Relief Act of 1940), the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage. The agreement shall in no way affect the amount of the annual MIP which will continue to be calculated in accordance with the original amortization provisions of the mortgage.

**§ 203.346 Postponement of foreclosure—mortgagors in military service.**

If at any time during default the mortgagor is a "Person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which the mortgagor is in such service shall be

## § 203.350

excluded in computing the period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in § 203.355 of this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

[36 FR 24508, Dec. 22, 1971, as amended at 61 FR 36265, July 9, 1996]

### ASSIGNMENT OF MORTGAGE

#### § 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.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a), the Commissioner shall, upon application by the mortgagee, approve the assignment to the Commissioner of any mortgage insured pursuant to section 248 of the National Housing Act (see § 203.43h) where the mortgagor has been in default for more than 90 days. The mortgagee may not request the Commissioner to accept an assignment until the mortgagee has submitted documents to the Commissioner showing that the requirements of § 203.604 have been met. HUD shall then notify the mortgagee of its approval of the mortgagee's actions under § 203.604 and that the mortgagee may assign the mortgage to the Secretary, or HUD will specify what further action the mort-

## 24 CFR Ch. II (4-1-06 Edition)

gagee must take to meet the requirements of § 203.604.

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided that the requirements of § 203.665 are satisfied.

(d) *Assignment of mortgages authorized by section 203(q), National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) if

- (1) The mortgagor has been in default for more than 90 days for failure to make a monthly payment,
- (2) The requirements of § 203.666 are satisfied, and
- (3) The date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

If the default is non-monetary, the date of default occurs prior to an action described in paragraph (d)(3) of this section, the requirements of § 203.666 are satisfied, and the mortgagor has been in default for more than 30 days, the Secretary may in his or her discretion, upon application by the mortgagee, agree to accept an assignment of the mortgage. If the leasehold estate has terminated before the mortgage has been assigned, or title to the property conveyed, to the Secretary, and the mortgage is in default for any reason for more than 30 days, the Secretary will, upon application by the mortgagee, agree to accept an assignment of the mortgage.

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a

defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0169)

[51 FR 21872, June 16, 1986, as amended at 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988; 55 FR 282, Jan. 4, 1980; 61 FR 35018, July 3, 1996]

#### § 203.351 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record, the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with the receipts covering all disbursements, as required by the fiscal data form. In addition, the following requirements shall be met:

(a) *Items to be included with application.* The following items shall be forwarded to the Commissioner with the application:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

(3) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(5) *Property.* All property of the mortgagor held by the mortgagee or to which it is entitled (other than the

cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. If a mortgagee's title policy is furnished, the Commissioner shall be a named insured under such policy.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(c) Title evidence for mortgages insured under § 203.43d as set forth in § 203.385 shall accompany the application for insurance benefits.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 7693, Apr. 10, 1972; 42 FR 57435, Nov. 2, 1977]

#### § 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

#### CLAIM PROCEDURE

#### § 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (i) of this section, the

## § 203.355

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 February 1, 1998, the mortgagee shall take one or a combination 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:

- (1) Obtain a deed-in-lieu of foreclosure (see §§ 203.357, 203.389 and 203.402(f) of this part) with title being taken in the name of the mortgagee or the Secretary;
- (2) Commence foreclosure;
- (3) Enter into a special forbearance agreement under § 203.614;
- (4) Complete a modification of the mortgage under § 203.616;
- (5) Complete a refinance of the mortgage under § 203.43(c);
- (6) Complete an assumption under § 203.512;
- (7) File a partial claim under § 203.371; or
- (8) Initiate a pre-foreclosure sale under § 203.370.

(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:

- (1) Do not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), (g), (h) and (i) of this section, the mortgagee must commence foreclosure within 90 days after the expiration of the time

## 24 CFR Ch. II (4-1-06 Edition)

during which foreclosure is prohibited; or

- (2) Require the prosecution of a foreclosure to be discontinued, the mortgagee must recommence the foreclosure within 90 days after the expiration of the time during which foreclosure is prohibited.

(d) *Property located on Indian land.* Upon default of a mortgage on property located on Indian land insured pursuant to section 248 of the National Housing Act (see § 203.43h of this part), the mortgagee must comply with §§ 203.350(b) and 204.664 of this part.

(e) *Property located on Hawaiian home lands.* Upon default of a mortgage on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (see § 203.43i of this part), the mortgagee must comply with §§ 203.350(c) and 203.665 of this part.

(f) *Property located on the Allegany Reservation of the Seneca Nation of Indians.* Upon default of a mortgage on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (see § 203.43j of this part), the mortgagee must comply with §§ 203.350(d) and 203.666 of this part, unless the mortgagor and the lessor have executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. If a lease renewal or new lease has been executed, the mortgagee must comply with paragraph (a) of this section.

(g) *Pre-foreclosure sale procedure.* Within 90 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 undertake one of the actions listed at § 203.355(a). The end-of-participation date is defined as:

- (1) Four months after the date of commencement of participation, if there is no signed Contract of Sale at

that time, unless extended by the Commissioner;

(2) Six months after the date of commencement of participation, if there is a signed contract but settlement has not occurred by that date, unless extended by the Commissioner;

(3) The date the mortgagee is notified of the mortgagor's withdrawal from the Pre-foreclosure Sale procedure; or

(4) The date of the letter sent by the mortgagee to the mortgagor prior to the expiration of the customary participation period, terminating the mortgagor's opportunity to participate in the Pre-foreclosure Sale procedure.

(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 undertake one of the actions listed at § 203.355(a) 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, whichever is later.

(i) *Modification under § 203.616, refinancing under § 203.43(c), or assumption under § 203.512.* Provided that the mortgagee has established the mortgagor's eligibility within the time frame provided in § 203.355(a), if a mortgagee enters into a loss mitigation relief measure (*i.e.*, modification under § 203.616, refinance under § 203.43(c), or assumption under § 203.512) and it fails, the six-month period provided in § 203.355(a) is extended by an additional 90 days to allow the mortgagee to try another loss mitigation tool or go to foreclosure.

[57 FR 47970, Oct. 20, 1992, as amended at 59 FR 50143, Sept. 30, 1994; 60 FR 57678, Nov. 16, 1995; 61 FR 35018, July 3, 1996; 62 FR 60129, Nov. 6, 1997]

**§ 203.356 Notice of foreclosure and pre-foreclosure sale; reasonable diligence requirements.**

(a) *Notice of foreclosure and pre-foreclosure sale.* The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within 30 days after the institution of foreclosure proceedings. The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within the time-frame prescribed by

the Secretary, of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

(b) *Reasonable diligence.* The mortgagee must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

[61 FR 36265, July 9, 1996]

**§ 203.357 Deed in lieu of foreclosure.**

(a) *Mortgagors owning one property.* In lieu of instituting or completing a foreclosure, the mortgagee may acquire property from one other than a corporate mortgagor by voluntary conveyance from the mortgagor who certifies that he does not own any other property subject to a mortgage insured or held by FHA. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance;

(4) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(5) The mortgagee transfers to the Commissioner good marketable title accompanied by satisfactory title evidence.

(b) *Corporate mortgagors.* A mortgagee may accept a deed in lieu of foreclosure from a corporate mortgagor in compliance with the requirements of paragraph (a) of this section, if the mortgagee obtains the prior written consent of the Commissioner.

(c) *Mortgagors owning more than one property.* The mortgagee may accept a deed in lieu of foreclosure in compliance with the provisions of paragraph (a) of this section, from an individual who owns more than one property which is subject to a mortgage insured or held by the FHA if the mortgagee

**§ 203.358**

obtains the prior written consent of the Commissioner.

**§ 203.358 Direct conveyance of property.**

In acquiring the property or conveying the property to the Commissioner the mortgagee may arrange for the deed to be made directly to the Commissioner from the mortgagor or other grantor. The mortgagee shall be responsible for determining that such conveyance will comply with all of the provisions of this part conveying good marketable title and satisfactory title evidence.

**§ 203.359 Time of conveyance to the Secretary.**

(a) *For mortgages insured under firm commitments issued prior to November 19, 1992 or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter prior to November 19, 1992.* After acquiring good marketable title to and possession of the property the mortgagee must transfer the property to the Secretary:

(1) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(2) Within such further time as may be necessary to complete the title examination and perfect the title.

(b) *For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992—*(1) *Conveyance by the mortgagee.* The mortgagee must acquire good marketable title and transfer the property to the Secretary within 30 days of the later of:

(i) Filing for record the foreclosure deed;

(ii) Recording date of deed in lieu of foreclosure;

(iii) Acquiring possession of the property;

(iv) Expiration of the redemption period; or

(v) Such further time as the Secretary may approve in writing.

(2) *Direct conveyance.* In cases where the mortgagee arranges for a direct conveyance of the property to the Secretary, the mortgagee must ensure

**24 CFR Ch. II (4-1-06 Edition)**

that the property is transferred to the Secretary within 30 days of the reasonable diligence time frame specified in § 203.356 of this part.

[57 FR 47971, Oct. 20, 1992, as amended at 61 FR 36453, July 10, 1996]

**§ 203.360 Notice of property transfer or pre-foreclosure sale and application for insurance benefits.**

(a) On the date the deed is filed for record the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance and shall assign, without recourse or warranty any or all claims which the mortgagee has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which the mortgagee acquired or conveyed such property, except such claims as may have been released with the approval of the Commissioner.

(b) Within 30 days of the closing of an approved pre-foreclosure sale, the mortgagee shall notify the Commissioner on a form prescribed by him of the pre-foreclosure sale.

[36 FR 24508, Dec. 22, 1971, as amended at 59 FR 50144, Sept. 30, 1994]

**§ 203.361 Acceptance of property by Commissioner.**

Upon receipt of notice of property transfer the Commissioner shall accept title to and possession of the property as of the date of the filing for record of the deed to the Commissioner, subject to compliance with the regulations in this part.

**§ 203.362 Conditions for withdrawal of application for insurance benefits.**

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and