

## § 203.345

ing 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 he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be con-

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strued as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

★ **ASSIGNMENT OF MORTGAGE** ★

**§ 203.350 Assignment of defaulted mortgage.**

(a) *In general.* The Secretary will accept an assignment of any mortgage covering a one-to-four family residence if the Secretary finds that the criteria for acceptance of an assignment under § 203.645 have been satisfied.

(b) *Assignments pursuant to section 248, 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 insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part) where the mortgagor has been in default for more than 90 days, provided that the requirements of § 203.664 are satisfied.

(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) *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.

(The information collection requirements in paragraphs (b) and (c) are approved by the Office of Management and Budget under control No. 2502-0169)

[52 FR 6914, Mar. 5, 1987]

**EFFECTIVE DATE NOTE:** Section 203.350 was revised at 52 FR 6914, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect



the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the Federal Register at least 30 days before the effective date.

The text of § 203.350 set forth below remains in effect until further notice (a correction document published at 53 FR 13404, Apr. 25, 1988, has been incorporated into the text of this section).

**§ 203.350 Assignment of defaulted mortgage.**

(a) *In general.* The Commissioner may approve the assignment to the Commissioner of any mortgage covering a one- to four-family residence if the Commissioner finds that the default was caused by circumstances beyond the mortgagor's control.

(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 mortgagee must take to meet the requirements of § 203.604.

(c) [Reserved]

(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.

(The information collection requirements in paragraph (b) are 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. 20, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988]

**§ 203.350a Assignment of defaulted mortgage.**

When the assignment of a defaulted mortgage to the Commissioner is accomplished pursuant to § 203.350 or § 203.650 the mortgagee shall file the assignment of the mortgage to the Commissioner for record within 30 days of the Commissioner's written approval of such assignment, or within such further time as may be authorized in writing by the Commissioner.

[41 FR 49735, Nov. 10, 1976]

**EFFECTIVE DATE NOTE: Section 203.350a** was removed at 52 FR 6914, Mar. 5, 1987. Before this rule becomes effective, the Department must revise its current mortgage assignment handbook, HUD Handbook 4330.2, to reflect the changes made by this rule. Additionally, the Department must select a contractor to administer the payments system. The rule will be made effective as soon as the Department accomplishes these tasks, and an announcement of the effective date will be published in the Federal Register at least 30 days before the effective date. The text of § 203.350a set forth above remains in effect until further notice.

**§ 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

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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

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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.**

With respect to defaulted mortgages on property located on Indian land insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part), the mortgagee shall comply with §§ 203.350(b) and 203.664 of this part. With respect to defaulted mortgages on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee shall comply with §§ 203.350(c) and 203.665 of this part. With respect to defaulted mortgages on property located on the Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) the mortgagee shall comply with §§ 203.350(d) and 203.666 of this part, provided that the mortgagor and the lessor have not 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. With respect to all other mortgages, including mortgages authorized by section 203(q) if the preceding sentence is inapplicable, the mortgagee shall take one of the following actions within one year from the date of default, or within any additional time as is approved by the Secretary or is authorized by §§ 203.345, 203.346, or §§ 203.650 through 203.660.

(a) The mortgagee shall obtain a deed in lieu of foreclosure (see §§ 203.357, 203.389 and 203.402(f)) with title being taken in the name of the mortgagee or the Secretary;

(b) The mortgagee shall commence foreclosure; or

(c) If the laws of the State in which the mortgaged property is situated do not permit the commencement of foreclosure within one year from the date of default, the mortgagee shall commence foreclosure within sixty days after the expiration of the time during which such foreclosure is prohibited by such laws.

[41 FR 49735, Nov. 10, 1976, as amended at 52 FR 48202, Dec. 20, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988]

#### § 203.356 Notice of foreclosure.

The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

#### § 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 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 Commissioner.

After acquiring good marketable title to and possession of the property the mortgagee shall transfer the property to the Commissioner:

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

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