

## § 203.600

## 24 CFR Ch. II (4-1-88 Edition)

**MORTGAGEE ACTION AND FORBEARANCE**

## § 203.600 Mortgage collection action.

Subject to the requirements of this subpart, mortgagees shall take prompt action to collect amounts due from mortgagors to minimize the number of accounts in a delinquent or default status. Collection techniques must be adapted to individual differences in mortgagors and take account of the circumstances peculiar to each mortgagor.

## § 203.602 Delinquency notice to mortgagor.

The mortgagee shall give notice to each mortgagor in default on a form supplied by the Secretary or, if the mortgagee wishes to use its own form, on a form approved by the Secretary, no later than the end of the second month of any delinquency in payments under the mortgage. If an account is reinstated and again becomes delinquent, the delinquency notice shall be sent to the mortgagor again, except that the mortgagee is not required to send a second delinquency notice to the same mortgagor more often than once each six months. The mortgagee may issue additional or more frequent notices of delinquency at its option.

## ★ § 203.604 Contact with the mortgagor.

## (a) [Reserved]

(b) The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid. If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

(c) A face-to-face meeting is not required if: (1) The mortgagor does not reside in the mortgaged property, (2) the mortgaged property is not within 200 miles of the mortgagee, its servicer, or a branch office of either, (3) the mortgagor has clearly indicated that he will not cooperate in the interview, (4) a repayment plan consistent with the mortgagor's circumstances is entered into to bring the mortgagor's account current thus making a meeting unnecessary, and payments thereunder are current, or (5) a reasonable effort to arrange a meeting is unsuccessful.

(d) A reasonable effort to arrange a face-to-face meeting with the mortgagor shall consist at a minimum of one letter sent to the mortgagor certified by the Postal Service as having been dispatched. Such a reasonable effort to arrange a face-to-face meeting shall also include at least one trip to see the mortgagor at the mortgaged property, unless the mortgaged property is more than 200 miles from the mortgagee, its servicer, or a branch office of either, or it is known that the mortgagor is not residing in the mortgaged property.

(e)(1) For mortgages insured pursuant to section 248 of the National Housing Act, the provisions of paragraphs (b), (c) and (d) of this section are applicable, except that a face-to-face meeting with the mortgagor is required, and a reasonable effort to arrange such a meeting shall include at least one trip to see the mortgagor at the mortgaged property, notwithstanding that such property is more than 200 miles from the mortgagee, its servicer, or a branch office of either. In addition, the mortgagee must document that it has made at least one telephone call to the mortgagor for the purpose of trying to arrange a face-to-face interview. The mortgagee may appoint an agent to perform its responsibilities under this paragraph.

## (2) The mortgagee must also:

(i) Inform the mortgagor that HUD will make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors;

(ii) Inform the mortgagor of other available assistance, if any;

(iii) Notify the mortgagor that if the mortgage remains in default for more than 90 days, the mortgagee shall request the Secretary to accept an assignment of the mortgage;

(iv) Notify the mortgagor of the qualifications for forbearance relief from the mortgagee, if any, and that forbearance relief may be available from the Secretary if the mortgage is assigned; and

(v) Inform the mortgagor of the names and addresses of HUD officials to whom further communications may be addressed.

(Approved by the Office of Management and Budget under control number 2502-0340)

[41 FR 49736, Nov. 10, 1976, as amended at 51 FR 21873, June 18, 1986; 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988]

**§ 203.606 Pre-foreclosure review.**

(a) Before initiating foreclosure, the mortgagee must ensure that all servicing requirements of this subpart have been met. The mortgagee may not commence foreclosure for a monetary default unless at least three full monthly installments due under the mortgage are unpaid after application of any partial payments that may have been accepted but not yet applied to the mortgage account.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without sending the notices required by §§ 203.650 and 203.651, and without the delay in foreclosure required by paragraph (a) of this section:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage.

(3) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is

not being applied to the mortgage debt.

(4) The property is owned by a corporation or partnership.

[52 FR 6915, Mar. 5, 1987]

**EFFECTIVE DATE NOTE:** Section 203.606 was revised at 52 FR 6915, 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 § 203.606 remaining in effect until further notice is set forth below.

**§ 203.606 Pre-foreclosure review.**

(a) The mortgagee shall review its file relating to the servicing of a mortgage before initiating foreclosure to satisfy itself that the case has been handled in accordance with the servicing requirements outlined in this subpart. The mortgagee shall not commence foreclosure for a monetary default unless at least three full monthly installments due on the mortgage are unpaid after application of any partial payments which may have been accepted but not yet applied to the mortgage account.

(b) If the mortgagee determines that any of the following conditions have been met, the mortgagee may initiate foreclosure without sending the assignment notices required by §§ 203.651 and 203.652.

(1) The mortgaged property has been abandoned or vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he/she has no intention of honoring his/her mortgage obligation.

(3) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1336, Jan 4, 1979]

**§ 203.608 Reinstatement.**

The mortgagee shall permit reinstatement of a mortgage, even after the institution of foreclosure proceedings, if the mortgagor tenders in a lump sum all amounts required to bring the account current, including foreclosure costs and reasonable attor-

**§ 203.610**

ney's fees and expenses properly associated with the foreclosure action, unless: (a) The mortgagee has accepted reinstatement after the institution of foreclosure proceedings within two years immediately preceding the commencement of the current foreclosure action, (b) reinstatement will preclude foreclosure following a subsequent default, or (c) reinstatement will adversely affect the priority of the mortgage lien.

**§ 203.610 Relief for mortgagor in military service.**

The mortgagee shall specifically give consideration to affording the mortgagor the benefit of relief authorized by §§ 203.345 and 203.346, if the mortgagor is "person in the military service" as that term is defined in the Soldiers and Sailors Civil Relief Act of 1940, as amended.

**§ 203.614 Conditions of special forbearance.**

(a) The Secretary may approve special forbearance relief by the mortgagee with respect to any loan insured under this part if the Secretary finds that default was due to circumstances beyond the mortgagor's control. Approval is given on condition that the mortgagor and mortgagee enter into a special forbearance agreement providing for:

(1) The increase, reduction, or suspension of regular mortgage payments for a specified forbearance period approved by the Secretary;

(2) The resumption of regular mortgage payments after the expiration of the forbearance period; and

(3) The payment of the total unpaid amount accruing prior to and during the forbearance period on or before the maturity date of the mortgage or on or before a date subsequent to the maturity date which is approved by the Secretary.

(b) The mortgagee may grant special forbearance relief without the approval of the Secretary subject to the following conditions:

(1) The mortgagor shall establish to the satisfaction of the mortgagee, whose finding shall be conclusive, that:

**24 CFR Ch. II (4-1-88 Edition)**

(i) The mortgagor does not own other property subject to a mortgage insured by the Secretary; and

(ii) The default was caused by circumstances beyond the control of the mortgagor.

(2) The written forbearance agreement shall:

(i) Provide for suspension or reduction of payments for a period not to exceed 18 months, or recognize that payments have already been suspended or reduced for a period not to exceed 18 months;

(ii) Provide for the resumption of regular mortgage payments after the expiration of the period of reduced or suspended payments; and

(iii) Provide for the repayment of the total unpaid amount accruing prior to and during the period of reduced or suspended payments on or before a date extending beyond the original maturity date for a period no longer than the period of forbearance.

**§ 203.616 Recasting of mortgage.**

(a) In addition to the special forbearance relief afforded in § 203.614, if the Secretary makes the finding required in paragraph (a) of that section, the Secretary may approve a modification of the terms of the mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or over such longer period of time as the Secretary may approve. The modification agreement may be effective when executed or upon the termination of a forbearance period.

(b) The Secretary's approval for a recasting of a mortgage for the purpose of changing the amortization provisions shall not be required where the mortgagee makes the findings prescribed in § 203.614(b)(1). In such instances, the recasting shall be limited to the remaining term of the mortgage or a term extending not more than 10 years beyond the original maturity date. The Secretary shall be given notice of such modification within 30 days of the execution of the modification agreement.

(c) Recasting may be refused in the sole discretion of the mortgagee.

**TEMPORARY MORTGAGE ASSISTANCE PAYMENTS AND ASSIGNMENT OF MORTGAGES TO HUD**

**SOURCE:** Sections 203.640 through 203.658 appear at 52 FR 6915, Mar. 5, 1987, unless otherwise noted.

**EFFECTIVE DATE NOTE:** Sections 203.640 through 203.649 and the undesignated center heading set forth above were added, §§ 203.650 through 203.658 were revised, and §§ 203.659 and 203.660 were removed at 52 FR 6915-6919, 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 §§ 203.650 through 203.660 remaining in effect until further notice follows the text of § 203.658.

**§ 203.640 Temporary mortgage assistance payments.**

(a) The Secretary may make temporary mortgage assistance payments (TMAP) to the mortgagee on behalf of a mortgagor who owns the property, except for property subject to a mortgage insured pursuant to section 247 (see § 203.665) or section 248 of the National Housing Act (see § 203.664), when the following conditions are met:

(1) The mortgagee has informed the mortgagor (under § 203.650) that it intends to foreclose the mortgage;

(2) At least three full monthly installments due on the mortgage are unpaid after the application of any partial payments that may have been accepted but not yet applied to the mortgage account;

(3) The mortgagor's default has been caused by circumstances that are beyond the mortgagor's control and that render the mortgagor temporarily unable to correct the delinquency within a reasonable time and to make full mortgage payments. For the purpose of evaluating this criterion, payments will be applied to the oldest unpaid installment and the date of default will be 30 days after the due date of the oldest unpaid installment. Once the date of default is established for purposes of processing the request for

foreclosure relief under § 203.652, it will not be affected by subsequent payments;

(4) There is a reasonable prospect that the mortgagor will be able to:

(i) Resume full mortgage payments after a period of reduced or suspended payments, not to exceed 36 months;

(ii) Begin repayment of TMAP at a time designated by the Secretary; and

(iii) Pay the mortgage in full by its maturity date or by such extended maturity date (not more than 10 years after original maturity) as the Secretary determines, with the consent of the mortgagee. The amount and duration of the mortgage delinquency will be considered in determining whether this criterion is met;

(5) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the National Housing Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver;

(6) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the National Housing Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver; and

(7) The Secretary determines that such payments are necessary to avoid foreclosure and are not inappropriate in the case of the mortgagor.

(b) A mortgagor is not eligible for TMAP in any case where:

(1) The mortgaged property has been abandoned, or has been vacant for more than 60 days;

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage;

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage;

**§ 203.641**

**24 CFR Ch. II (4-1-88 Edition)**

(4) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt;

(5) TMAP have been previously provided on behalf of the mortgagor—unless for a period of at least 12 months from the time previous assistance payments were terminated, the mortgagor made full payments to the mortgagee required under the mortgage, and made any payments to the Secretary required under the repayment agreement;

(6) The property is owned by a corporation or partnership; or

(7) The mortgagor is unwilling to execute such documents as the Secretary requires (including security instruments creating a lien on the property) to assure repayment of the TMAP to the Secretary.

**§ 203.641 Execution of security instruments and amount of temporary mortgage assistance payments.**

(a) Before temporary mortgage assistance payments are made, the mortgagor must execute security instruments creating a lien on the property to assure repayment to the Secretary.

(b) Monthly TMAP on behalf of a mortgagor will be in an amount sufficient to assure that the mortgagor pays no more than 35 percent of net effective income for housing expenses during the period when TMAP is being provided. For this purpose, a mortgagor's net effective income is monthly gross income less Federal income taxes; and housing expenses are the sum of the mortgagor's usual monthly expenses for maintenance, utilities, hazard insurance, and the monthly mortgage payment, including escrowed amounts. A mortgagor may contribute a greater portion of net effective income if he or she submits a written request to do so.

(c) The initial disbursement of TMAP may include the first monthly payment computed in accordance with paragraph (b) of this section, together with any additional sum necessary to make the payments on the mortgage current.

[52 FR 6915, Mar. 5, 1987, as amended at 52 FR 37938, Oct. 13, 1987]

**EFFECTIVE DATE NOTE:** Section 203.641(c) was amended at 52 FR 37938, Oct. 13, 1987, by removing the words "paragraph (a) of this section" and substituting in their place the words "paragraph (b) of this section." The Department must complete revisions to HUD Handbook 4330.2 and must finish the process of selecting a contractor to administer the nationwide processing of payments under the Temporary Mortgage Assistance Payments program before the rule published on March 5, 1987 (52 FR 6915), as amended by this rule can be made effective. The effective date will be announced by publication in the FEDERAL REGISTER.

**§ 203.642 Period of temporary mortgage assistance payments.**

(a) TMAP will terminate on the earliest of the following dates:

(1) The expiration of the TMAP agreement. This agreement will provide for assistance for a period of not longer than 18 months after the effective date of the first monthly TMAP, except that the agreement period may be extended to cover a total time period not to exceed 36 months where the Secretary has determined that an extension is necessary to avoid foreclosure and that there is a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4). The effective date of the first monthly TMAP will be the due date of the monthly payment on the insured mortgage for which the first monthly TMAP payment, excluding any TMAP advanced to pay for accumulated arrearages, is credited;

(2) The date on which three payments of the mortgagor's portion of the full monthly payment are due and unpaid by the mortgagor, except that TMAP may be continued if the Secretary determines that (i) the mortgagor's default under the TMAP agreement was caused by circumstances beyond the mortgagor's control; and (ii) the extension is justified under paragraph (a)(1) of this section;

(3) The date on which the mortgagor conveys title to the property;

(4) The date on which the Secretary determines that, because of the mortgagor's financial circumstances—

(i) Payments are no longer necessary to avoid foreclosure, or

(ii) There is no longer a reasonable prospect that the mortgagor will be able to make the payments and repayments specified in § 203.640(a)(4); or

(5) The date on which the Secretary determines that the decision to approve assistance was based on fraudulent information.

(b) TMAP will be made only to the extent approved by the Congress in appropriation Acts.

**§ 203.643 Review of mortgagor's financial circumstances during TMAP period.**

(a) While assistance payments are being provided, the mortgagor must provide, in a form prescribed by the Secretary, information as to occupancy, employment, family composition and income whenever a review of the TMAP is being undertaken under paragraph (c) of this section. When HUD requests such information, it will offer to furnish the mortgagor with a referral to a local agency approved by HUD to provide homeownership counseling in connection with this program, or, if there are no such agencies, HUD will offer to provide homeownership counseling directly.

(b) TMAP will be terminated if the mortgagor fails to furnish the information required in paragraph (a) within 15 days after the date of the Secretary's request, except that TMAP may be continued if the Secretary determines that the failure to furnish the information was caused by circumstances beyond the mortgagor's control.

(c) The amount of monthly payment due from the mortgagor under the TMAP agreement while assistance payments are being provided will be reviewed and, if appropriate, modified by the Secretary in consultation with the mortgagor, under the following circumstances:

(1) Immediately before expiration of the temporary mortgage assistance payment agreement;

(2) When the mortgagor is in default under the TMAP agreement for two months or longer;

(3) When a mortgagor requests review for good cause, or when HUD discovers that TMAP was approved

based on significantly inaccurate information or that the mortgagor's circumstances have changed substantially. (But see § 203.641(b).)

(d) The Secretary may increase or decrease the amount of TMAP from time to time to reflect changes in the escrow requirements.

(Approved by the Office of Management and Budget under control number 2502-0159) [52 FR 6915, Mar. 5, 1987, as amended at 52 FR 37938, Oct. 13, 1987]

**EFFECTIVE DATE NOTE:** Section 203.643(c)(3) was amended at 52 FR 37938, Oct. 13, 1987, by removing reference to "§ 203.641(a)" and substituting in its place the reference "§ 203.641(b)." The Department must complete revisions to HUD Handbook 4330.2 and must finish the process of selecting a contractor to administer the nationwide processing of payments under the Temporary Mortgage Assistance Payments program before the rule published on March 5, 1987 (52 FR 6915), as amended by this rule can be made effective. The effective date will be announced by publication in the FEDERAL REGISTER.

**§ 203.644 Repayment of temporary mortgage assistance payments.**

(a) On the date TMAP are terminated, the TMAP loan will start to accrue interest at the lesser of the quarterly average dominant market rate for FHA and VA insured mortgages (as determined by HUD's weekly survey of mortgage originators) which was in effect on the date TMAP assistance was approved, or the rate specified in the FHA-insured first mortgage. The assistance will be repaid to the Secretary under a repayment agreement executed in accordance with paragraphs (b) and (c) of this section.

(b) The repayment agreement, to be executed by the mortgagor and the Secretary upon termination of TMAP, will provide for monthly payments by the mortgagor:

(1) In an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments; or

(2) In such other amount or amounts as may be prescribed by regulation at the time of execution of any repayment agreement.

**§ 203.649**

(d) The Secretary may increase or decrease the monthly payment the mortgagor must pay from time to time to reflect changes in escrow requirements.

(Approved by the Office of Management and Budget under control number 2502-0159)

**§ 203.649 Payment of mortgage loan, including arrearages, after period of reduced or suspended payments.**

(a) Interest continues to accrue on the outstanding principal balance in accordance with the terms of the mortgage. Interest starts to accrue on advances made by HUD on the mortgagor's behalf at the rate specified in the mortgage on the date the advance is made. Any amounts advanced by HUD as well as the amount due under the original mortgage note, including interest payments due, will be repaid to the Secretary under a forbearance agreement executed in accordance with paragraph (b) of this section.

(b) The forbearance agreement to be executed by the mortgagor and the Secretary upon termination of the period of reduced or suspended payments will provide for revised monthly payments by the mortgagor in an amount determined by the Secretary upon an examination of the mortgagor's financial condition and circumstances, and the mortgagor's ability to contribute to the mortgage payments. However, the revised monthly payment amount will not be less than the mortgagor's original monthly payment for principal and interest required under the mortgage note, plus monthly payments for current taxes, for current monthly service charges, for current assessments, and for current ground rents.

(c) The mortgagor must provide the information required in § 203.648(a) to the Secretary at least annually and at such other times as the Secretary may require, until the payments on the mortgage are current.

(d) The forbearance agreement will be reviewed from time to time at the request of the mortgagor or at the initiation of the Secretary, and, subject to the minimum payment requirement of paragraph (b) of this section, the amount will be adjusted, if appropri-

**24 CFR Ch. II (4-1-88 Edition)**

ate, based on the mortgagor's current financial circumstances.

(e) The mortgage loan, including all arrearages, must be paid by no later than the end of the remaining term of the mortgage, extended, if necessary, by up to 10 years.

(Approved by the Office of Management and Budget under control number 2502-0159)

**§ 203.650 Preliminary notice to mortgagors.**

Except as provided in § 203.606(b), the mortgagee shall, before initiating any action required by law to foreclose the mortgage, notify the mortgagor in a document approved by the Secretary that the mortgagor is in default, that the mortgagee intends to foreclose unless the mortgagor cures the default, and that the mortgagor may be eligible for assistance from HUD under this subpart. This notice may not be given before three full monthly payments are due and unpaid.

**§ 203.651 Determination by mortgagee.**

(a) In any case in which the mortgagee determines that all of the conditions of either § 203.640(a) or § 203.645(a) have been met, the mortgagee must request that the Secretary provide assistance under this subpart, and must delay the initiation of foreclosure.

(b) Except as provided in § 203.606(b), in any case in which the mortgagee determines that the mortgagor is not eligible under § 203.640 or § 203.645, the mortgagee must advise the mortgagor that the mortgagor may ask the HUD Field Office Manager, by letter or telephone, to provide mortgage foreclosure relief in accordance with these regulations. If the mortgagor makes such a request to the HUD Field Office Manager by telephone, it must be made within 15 days after the date of the mortgagee's notice. If such a request to HUD is in writing, it must be received within 15 days after the date of the mortgagee's notice.

(c) The mortgagee must send the notice described in paragraph (a) or (b) of this section in writing in a docu-

ment approved as to form by the Secretary.

**§ 203.652 Preliminary review and determination by Secretary.**

(a) Promptly upon receiving a request from the mortgagor for assistance under §§ 203.640 through 203.656 of this part, the Secretary will notify the mortgagee of the request and the mortgagee must delay the initiation of foreclosure. The Secretary will furnish the mortgagor with a list of local agencies approved by HUD to provide homeownership counseling in connection with this program.

(b) The mortgagee and mortgagor must promptly furnish to the Secretary all of the information requested to assist in a preliminary determination of whether or not to provide assistance under this subpart. Information requested of the mortgagor or the mortgagee must be received by the Secretary within 15 days after the date of the Secretary's notice.

(c) After receipt of the required information, the Secretary will:

(1) Notify the mortgagor and the mortgagee that the mortgagor is not eligible for TMAP or for assignment, and the reasons for this determination; or

(2) Notify the mortgagor and the mortgagee:

(i) That the mortgagor is eligible for TMAP; and

(ii) Of the amount and term of the payments that the mortgagor will be required to make during the period of reduced or suspended payments; or

(3) Notify the mortgagor and the mortgagee that assignment of the mortgage will be accepted and notify the mortgagor of the amount and term of the payments the mortgagor will be required to make during the period of reduced or suspended payments; or

(4) Request that the mortgagee provide additional forbearance to the mortgagor.

(d) If the mortgagor is notified of ineligibility, the mortgagor may present additional written information or argument relating to his or her eligibility for mortgage foreclosure relief within 15 days after the date of the Secretary's notice (provided for under

paragraph (c)(1) of this section). Alternatively, the mortgagor may present such information or argument in person at a conference. A conference may be requested by telephone or in writing if the request is received within 15 days after the date of the Secretary's notice under paragraph (c)(1) of this section. The conference will be conducted in accordance with § 203.653 and must be held within 25 days of the date of the Secretary's notice under paragraph (c)(1) of this section.

(e) If the mortgagor is determined to be eligible for TMAP or assignment, the mortgagor will be asked to meet with the Secretary's representative to discuss the amount and term of the mortgagor's payments under the TMAP or forbearance agreement to be executed.

(Approved by the Office of Management and Budget under control number 2502-0189)

**§ 203.653 Conference.**

The conference to contest the Secretary's preliminary determination of ineligibility will be conducted by the Secretary's representative and will not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses, or pay the expenses of witnesses called by the mortgagor or on the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor will be permitted, at or before the conference, to examine the material on which the Secretary's preliminary determination is based. The conference will be held at the HUD office, or at a mutually convenient place.

**§ 203.654 Final decision.**

The Secretary will promptly advise the mortgagor and the mortgagee of the final decision in writing. If the Secretary determines to approve TMAP, or to accept an assignment of the mortgage and provide forbearance

in accordance with § 203.645, or to provide forbearance in accordance with § 203.664 or § 203.665, the mortgagor will be asked to meet with the Secretary's representative to discuss the amount and term of the payments that the mortgagor will be required to make under the TMAP or forbearance agreement to be executed. If the Secretary determines not to approve TMAP, and neither to accept an assignment of the mortgage under § 203.645 nor to provide forbearance in accordance with § 203.664 or § 203.665, the Secretary will advise the mortgagor of the findings and the specific criteria not met by the mortgagor.

**§ 203.656 Time limits.**

(a) All the time limits provided in §§ 203.640 through 203.652, and in §§ 203.664 and 203.665 are calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday, or legal holiday, the last day for taking the action is the next following regular work day.

(b) If a mortgagor fails to take a required action within the time limits specified in §§ 203.640 through 203.652, 203.664, and 203.665, he or she thereby loses his or her right to further consideration for relief. However, where the mortgagor demonstrates good cause for missing a time limit for action, the mortgagee or the Secretary will consider the application after the time has expired.

**§ 203.658 Foreclosure.**

(a) Except as provided in § 203.606(b), the mortgagee must not initiate foreclosure before the mortgagor has had an opportunity to request the Secretary to provide foreclosure relief under these regulations and to support his or her request as provided in §§ 203.640 through 203.656.

(b) The mortgagee must accept any TMAP from the Secretary and credit the payments to the mortgagor's account.

(c) The mortgagee must assign the mortgage to the Secretary when directed by the Secretary to do so.

(d) The mortgagee may initiate foreclosure when:

(1) The conditions of § 203.606(b) are met;

(2) The mortgagee does not receive notice from the Secretary, within 25 days from the date of its notice to the mortgagor under § 203.651, that the mortgagor has requested assistance; or

(3) The Secretary advises the mortgagee that it may proceed with foreclosure.

**EFFECTIVE DATE NOTE** Sections 203.650 through 203.658 were revised and §§ 203.659 and 203.660 and the undesignated center heading set forth below were removed at 52 FR 6915-6919, 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 §§ 203.650 through 203.660 set forth below remains in effect until further notice.

**ASSIGNMENT OF MORTGAGES TO HUD**

**Assignment of mortgages.**

(a) The Secretary will accept assignments of mortgages insured under this part in order to avoid foreclosure when the following conditions are met:

(1) The mortgagee has informed the mortgagor that it intends to foreclose the mortgage;

(2) At least three full monthly installments due on the mortgage are unpaid after application of any partial payments which may have been accepted but not yet applied to the mortgage account.

(3) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if the property has been leased or rented and the rental income has been applied to the mortgage delinquency or to effect repairs necessary to maintain the property in a safe and habitable condition or if such waiver is determined to be in the best interests of the Department.

(4) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if the income from such other property is the mortgagor's principal source of income.

(5) The mortgagor's default has been caused by circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency within a

reasonable time or make full mortgage payments.

(6) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments not exceeding 36 months and will be able to pay the mortgage in full by its maturity date extended, if necessary, by up to ten years.

(b) A mortgage shall not be eligible for assignment in any case where:

(1) The mortgaged property has been abandoned or vacant for more than 60 days.

(2) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he has no intention of fulfilling his obligation under the mortgage; or

(3) The mortgagee is prevented by law from initiating foreclosure of the mortgage.

(4) The mortgagor owns two or more properties occupied by tenants who are paying rent, and the rental income from the property under review is not being applied to the mortgage on that property.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.651 Preliminary notice to mortgagors.

In all cases, except as provided in § 203.606(b), prior to initiating any action required by law to foreclose the mortgage but not before three full monthly payments are due and unpaid, the mortgagee shall notify the mortgagor in a form approved by the Secretary that the mortgagor is in default, the mortgagee intends to foreclose unless the mortgagor cures the default, and the mortgagee is considering whether or not to request the Secretary to accept assignment of the mortgage.

[44 FR 1337, Jan. 4, 1979]

§ 203.652 Determination by mortgagee.

(a) In any case in which the mortgagee determines that all of the conditions of § 203.650(a) are met, it shall request the Secretary to accept assignment of the mortgage.

(b) Except as provided in § 203.606(b), in any case which the mortgagee determines that all of the conditions of § 203.650(a) are not met, it will advise the mortgagor that the mortgagor may, by letter or telephone, ask the Secretary to accept assignment of the mortgage. Such request must be received by the Secretary within 15 days after the mortgagee's notice that it will not request acceptance of assignment. The mortgagee will delay initiation of foreclosure upon notice from the Secretary.

(c) The mortgagee shall notify the mortgagor of its determination under paragraph (a) or (b) of this section in a form approved by the Secretary.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.654 Preliminary review and determination by Secretary.

(a) The mortgagee and mortgagor shall promptly furnish to the Secretary all of the information requested to assist in a preliminary determination of whether or not to accept an assignment of the mortgage. Information requested of the mortgagor must be forwarded within 15 days of the date of Secretary's request.

(b) If after preliminary review, the Secretary determines that assignment should be accepted the mortgagee shall assign the mortgage upon notification by the Secretary.

(c) If after preliminary review of the documents, the Secretary determines that assignment should not be accepted, the Secretary will notify the mortgagee and the mortgagor of the reasons for the determination and will advise the mortgagor that he/she may request further consideration. The mortgagor may present additional information or argument by mail or by telephone within 15 days of the notice or, alternatively, the mortgagor shall be entitled to present such information or argument in person at a conference which must be held in accordance with § 203.656 within 25 days of the notice.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.656 Conference.

The conference provided in § 203.654(c) shall be conducted by the Secretary's representative and shall not be an adversary proceeding or subject to formal rules of evidence. The mortgagor may be represented by an attorney or other representative and may call witnesses and present oral and documentary information. However, the Secretary's representative may not compel the attendance of witnesses or pay expenses of witnesses called by the mortgagor or on the mortgagor's behalf. Cumulative, repetitious or immaterial arguments or materials shall not be presented. The mortgagor shall be permitted to examine the material on which the Secretary's preliminary negative decision is based at or before the conference. The conference shall be held at the HUD office or at a mutually convenient place.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.658 Final decision.

The Secretary shall promptly advise the mortgagor and the mortgagee of the final decision in writing and by telephone if practical. If the Secretary determines not to accept assignment the mortgagor shall also

be advised of the findings and the specific criteria not met by the mortgagor.

§ 203.659 Foreclosure.

(a) Except as provided in § 203.606(b), the mortgagee shall not initiate foreclosure before the mortgagor has had an opportunity to request the Secretary to accept assignment of the mortgage and to support its request as provided in §§ 203.650 through 203.662.

(b) The mortgagee shall assign the mortgage to the Secretary when directed by the Secretary to do so.

(c) The mortgagee may initiate foreclosure when:

- (1) The conditions of § 203.606(b) are met.
- (2) The mortgagee does not receive notice from the Secretary within 20 days from the date of its notice to the mortgagor that the mortgagor has requested the Secretary to accept assignment of the mortgage;
- (3) The Secretary advises the mortgagee that the mortgagor failed to provide the information requested or to attend a conference, within the time required; and
- (4) The Secretary advises the mortgagee that, after reconsideration of a preliminary decision, assignment will not be accepted.

[41 FR 49736, Nov. 10, 1976, as amended at 44 FR 1337, Jan. 4, 1979]

§ 203.660 Time limits.

(a) All time limits provided in §§ 203.650 through 203.662 shall be deemed to be calendar days unless otherwise expressly stated. When the last day for taking the required action falls on a Saturday, Sunday or legal holiday, the last day for taking such action shall be the next following regular working day.

(b) If a mortgagor fails to take required action within the time limits specified in §§ 203.650 through 203.662 he thereby loses his right to further consideration of assignment of the mortgage.

**MORTGAGES IN DEFAULT ON PROPERTY LOCATED ON INDIAN RESERVATIONS**

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

(a) *Assignment.* 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 of this part), the mortgagee must submit documents showing that the requirements of § 203.604 have been met and must provide all information in its possession concerning the mortgagor's eligibility for relief under this section.

(b) *Forbearance.* (1) The Secretary will make forbearance relief available to a mortgagor where the mortgage is assigned in accordance with § 203.350(b), if:

(i) The mortgagor's default has been caused by circumstances that are beyond the mortgagor's control and that render the mortgagor unable to correct the delinquency within a reasonable time and to make full mortgage payments. For the purpose of evaluating this criterion, payments will be applied to the oldest unpaid installment and the date of default will be 30 days after the due date of the oldest unpaid installment. Once the date of default is established for purposes of processing the request for relief, it will not be affected by subsequent payments;

(ii) There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a period of reduced or suspended payments not to exceed 36 months and will be able to pay the mortgage in full by its maturity date or by such extended maturity date (not more than 10 years after original maturity) as the Secretary determines;

(iii) The property is the mortgagor's principal place of residence. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver;

(iv) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary. This criterion may be waived by the Secretary if application of the criterion would adversely affect achievement of the purposes of the Act. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver;

(v) The mortgagor furnishes the Secretary within 15 days of the Secretary's request all the information requested to assist in a preliminary determination of whether or not to forbear.

(2) The Secretary will not forbear where:

(i) The mortgaged property has been abandoned or has been vacant for more than 60 days;

(ii) The mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he or she has no intention of fulfilling his or her obligation under the mortgage; or

(iii) The mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt.

(3) The request for forbearance will be processed as follows:

(i) Promptly after receiving a request from the mortgagor for information about forbearance, the Secretary will furnish the mortgagor with the names of any local agencies approved by HUD to provide homeownership counseling in connection with the assignment (with forbearance) program.

(ii) The mortgagor and mortgagee must furnish the Secretary, within 15 days of the date of the Secretary's request, all the information requested to assist in a preliminary determination of whether or not to forbear.

(iii) After review of the documents, the Secretary will notify the mortgagor of the preliminary determination whether or not the mortgagor is eligible for forbearance. If the Secretary determines that the mortgagor is ineligible, the Secretary will notify the mortgagor of the reasons for the determination and will advise the mortgagor that he or she may request further consideration.

(iv) The mortgagor may present additional written information or argument relating to his or her eligibility for forbearance, including the amount of any proposed relief, within 15 days after the date of the Secretary's notice of preliminary determination. Alternatively, the mortgagor may present such information or argument in person at a conference, if the oral or written request is received within 15 days after the date of the Secretary's notice of preliminary determination. The conference will be conducted in accordance with § 203.653 and must be held within 25 days of the date of the

Secretary's notice of preliminary determination.

(v) The Secretary will notify the mortgagor of the final decision on eligibility in accordance with § 203.654.

(vi) Time limits in this section apply as described in § 203.656.

(4) The amount forborne, period of forbearance, periodic review of mortgagor's circumstances and payment of the mortgage after forbearance will be in accordance with §§ 203.646 through 203.649.

(Approved by the Office of Management and Budget under control number 2502-0169)

(52 FR 6919, Mar. 5, 1987)

**EFFECTIVE DATE NOTE:** Section 203.664 and the undesignated center heading set forth above were revised at 52 FR 6919, 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 § 203.664 set forth below remains in effect until further notice.

§ 203.664 Forbearance relief on Indian land insured pursuant to section 248 of the National Housing Act.

The provisions of §§ 203.650 through 203.660 shall not apply to mortgages insured pursuant to section 248 of the National Housing Act (see § 203.43h) if the mortgagee assigns the mortgage in accordance with § 203.350(b).

(a) *Forbearance relief.* (1) The Secretary will make forbearance relief available to a mortgagor when the mortgage has been insured pursuant to section 248 of the National Housing Act where the mortgage is assigned if:

(i) The mortgagor does not own other property subject to a mortgage insured or held by the Secretary except where the income from such other property is the mortgagor's principal source of income;

(ii) The mortgagor's default has been caused by circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency within a reasonable time or make full mortgage payments;

(iii) There is a reasonable prospect that the mortgagor will be able to resume full