

This draft section does not include updates from Mortgagee Letter 2020-21, Enhancements to  
FHA’s Claims Without Conveyance of Title (CWCOT) Procedures and  
Mortgagee Letter 2020-22, FHA’s COVID-19 Loss Mitigation Options.

## **FHA Single Family Housing Policy Handbook**

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### III. SERVICING AND LOSS MITIGATION

#### A. TITLE II INSURED HOUSING PROGRAMS FORWARD MORTGAGES

This section provides the standards and procedures applicable to the servicing of all Single Family (one to four units) Mortgages insured under Title II of the National Housing Act, except for Home Equity Conversion Mortgages (HECM). The Mortgagee must fully comply with all of the following standards and procedures when servicing a Mortgage insured by the Federal Housing Administration (FHA).

##### 1. Servicing of FHA-Insured Mortgages

Only FHA-approved Mortgagees may service FHA-insured Mortgages. Mortgagees may service Mortgages they hold or that are held by other FHA-approved Mortgagees.

###### a. Servicing Roles and Responsibilities

###### i. Definitions

The Mortgage Holder is the Entity who holds title to the FHA-insured Mortgage and has the right to enforce the mortgage agreement.

The Mortgage Servicer (Servicer) is the Entity responsible for performing servicing actions on FHA-insured Mortgages on its behalf or on behalf of or at the direction of another FHA-approved Mortgagee.

###### ii. Standard

Mortgage Holders must ensure all FHA-insured Mortgages are serviced by a Servicer in accordance with FHA requirements and all applicable laws.

Servicers must service all FHA-insured Mortgages in accordance with FHA requirements and all applicable laws.

###### (A) Laws Applicable to Mortgage Servicing Generally

Mortgagees must comply with all laws, rules, and requirements applicable to mortgage servicing, including full compliance with the applicable requirements under the purview of the Consumer Financial Protection Bureau (CFPB), including the Real Estate Settlement Procedure Act (RESPA) and the Truth in Lending Act (TILA).

FHA requirements that are more stringent or restrictive than those provided for in applicable law are set forth in this *SF Handbook* and the Mortgagee must comply with these requirements.

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###### **(B) Contract Terms**

Where mortgage contract terms are more stringent or restrictive than those provided for in applicable law, the Mortgagee must comply with the mortgage contract terms.

###### **(C) Nondiscrimination Policy**

Mortgagees must comply with all antidiscrimination laws, rules, and requirements applicable to servicing performing FHA-insured Mortgages and FHA-insured Mortgages in Default, including full compliance with the applicable requirements of:

- the Fair Housing Act, 42 U.S.C. §§ 3601 et seq.);
- the Fair Credit Reporting Act, 15 U.S.C. § 1681; and
- the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 and corresponding regulations at 12 CFR part 202.

The Mortgagee must make all determinations with respect to the adequacy of the Borrower's income in a uniform manner that does not discriminate because of the actual or perceived race, color, religion, sex, national origin, familial status, handicap, marital status, sexual orientation, gender identity, source of income of the Borrower, or location of the Property.

###### **b. Responsibility for Servicing Actions**

Mortgage Holders are responsible for all servicing actions, including the acts of its Servicers.

Servicers are responsible for their actions in servicing FHA-insured Mortgages, including actions taken on behalf, or at the direction, of the Mortgage Holder.

The costs associated with subservicing may not be imposed on the Borrower or passed along to HUD in a claim for mortgage insurance benefits.

###### **i. Responsibility during Transfers of Servicing Rights**

###### **(A) Definitions**

The Transferor Servicing Mortgagee is the Mortgage Servicer that transfers servicing responsibilities.

The Transferee Servicing Mortgagee is the Mortgage Servicer to which the servicing responsibilities have been transferred.

The Transfer Date is the date on which the Borrower's Mortgage Payment is first due to the Transferee Servicing Mortgagee.

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###### **(B) Standard**

The Transferor Servicing Mortgagee remains responsible for the servicing of an FHA-insured Mortgage until the Transfer Date. The Transferor Servicing Mortgagee must verify that the change of legal rights to service has been reported accurately.

On the Transfer Date, the Transferee Servicing Mortgagee assumes responsibility for:

- all servicing actions, including ensuring resolution of any servicing errors that were, and remain, the responsibility of the Transferor Servicing Mortgagee;
- obtaining the complete mortgage file, including origination and servicing records; and
- ensuring that the original Mortgage, mortgage Note, or deed of trust is preserved.

###### **(C) Required Documentation**

The Transferor Servicing Mortgagee must report the Transfer Date and update the mortgage record in FHA Connection (FHAC) within 15 Days of the Transfer Date.

#### **ii. Responsibility for Servicing when the Mortgage is Sold**

###### **(A) Definition**

A Mortgage Sale is a transaction in which a Mortgage Holder sells the Mortgage to another FHA-approved Mortgagee.

###### **(B) Standard**

The Selling Mortgage Holder relinquishes all rights and obligations under the contract for mortgage insurance on the effective date of the sale. The Selling Mortgage Holder remains responsible for Mortgage Insurance Premiums (MIP) until notice of the sale is received by HUD via FHAC.

The Purchasing Mortgage Holder is the Mortgagee that purchases the Mortgage and thereby succeeds to all rights and obligations of the Selling Mortgage Holder under the contract for mortgage insurance. As of the effective date of the sale, the Purchasing Mortgage Holder becomes responsible for outstanding MIP obligations, regardless of the date of accrual, and must confirm that the details of the mortgage sale have been reported accurately.

###### **(C) Required Documentation**

The Selling Mortgage Holder must report the effective date of the sale of the Mortgage as the “Transfer Date” and update the mortgage record in FHAC within 15 Days of the date of the sale.

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### iii. Registration with Mortgage Electronic Registration System, Inc.

#### (A) Definition

The Mortgage Electronic Registration System (MERS) is an electronic tracking system identified as nominee for a Mortgage Holder.

#### (B) Standard

Mortgagees may voluntarily register FHA-insured Mortgages with MERS. The Mortgage Holder remains responsible for all servicing actions.

### c. Providing Information to HUD

The Mortgagee must respond to verbal or written requests for individual account information, including all servicing information and related data and the entire mortgage origination file, from HUD staff or from a HUD-approved counseling agency acting with the consent of the Borrower.

When HUD staff request information, the Mortgagee must make available legible documents and in the format (electronic or hard copy) requested within 24 hours of the request, or as otherwise permitted by HUD.

### d. Communication with Borrowers and Authorized Third Parties

#### i. Definition

Authorized Third Parties are parties who are not Borrowers on the Mortgage but who are authorized to communicate with Mortgagees regarding a Mortgage.

#### ii. Standard

The Mortgagee must provide mortgage information and arrange for individual consultation with the Borrower and/or the Authorized Third Party, upon request by the Borrowers.

The Mortgagee must comply with all laws, rules, and requirements applicable to third-party access to mortgage information.

### iii. Required Documentation

If communicating with an Authorized Third Party, the Mortgagee must include documentation of the authorization in the servicing binder:

- a copy of a signed authorization from the Borrower;
- a copy of a Power of Attorney (POA), order of guardianship, or other documentation authorizing that third party to act on behalf of the Borrower; or

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- other documentation showing legal authorization to access the Borrower's records.

#### e. Payment Administration

##### i. Receipt of Payments

###### (A) Definition

A Trust Clearing Account refers to a fiduciary account (usually a temporary one) containing Borrower funds that will be transferred by the Mortgagee to another account before the end of an accounting period.

###### (B) Standard

The Mortgagee must either use a Trust Clearing Account or special custodial account to hold all payments on the insured Mortgage.

The Mortgagee's Trust Clearing Account may be used for collections received on all types of Mortgages. If a Trust Clearing Account is not used, the Mortgagee must immediately transfer payments into a special custodial account.

##### ii. Application of Payments

Mortgagees using special custodial accounts must withdraw an amount equal to the principal, interest, and service charges within 30 Days after deposit and post to the Borrower's records accordingly.

The Mortgagee must apply Borrower payments in the following order:

- to MIPs due, if any;
- to charges for ground rents, taxes, special assessments, including any assessments related to a Property Assessed Clean Energy (PACE) obligation, flood insurance premiums, if required, and fire and other hazard insurance premiums;
- to interest on the Mortgage;
- to amortization of the principal of the Mortgage; and
- to Late Charges, provided, however, that any amounts owed for Late Charges must be handled consistent with TILA regulations.

The Mortgagee may only apply funds for payments of optional insurance coverage premiums after the application of funds to all other elements of the monthly Mortgage Payment.

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#### iii. Return of Partial Payments for Less than the Amount Due

##### (A) Definition

A Partial Payment is a payment of any amount less than the full amount due under the Mortgage at the time the payment is tendered, including Late Charges and amounts advanced by the Mortgagee on behalf of the Borrower.

##### (B) Standard

For performing Mortgages, the Mortgagee may return any Partial Payment to the Borrower with a letter of explanation.

##### (C) Required Documentation

The Mortgagee must note in its servicing file any Partial Payments received and, if applicable, documentation on the date the payment was returned with a letter of explanation.

#### iv. Application of Partial Prepayments

##### (A) Definition

A Partial Prepayment is a payment of part of the principal amount before the date on which the principal is due.

An Advance Full Monthly Payment is the payment of an amount larger than the full monthly payment, equaling an additional full monthly payment.

##### (B) Standard

The Mortgagee must apply Partial Prepayments as requested by the Borrower as either:

- advance full monthly payments; or
- additional payments toward reducing principal and future monthly payments.

In the event that the Borrower does not specify how the Partial Prepayment should be applied, the Mortgagee should communicate with the Borrower to determine the method of application or apply the payment in a manner previously communicated to the Borrower.

If the Borrower elects to have Partial Prepayments equal to a full monthly payment applied as an advance full monthly payment, the Mortgagee must allow the Borrower to skip an equal number of installments in the future without creating a mortgage Default or incurring a Late Charge.



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#### v. Prepayment

##### (A) Definitions

A Partial Prepayment is a payment of part of the principal amount before the date on which the principal is due.

A Payoff or Prepayment in Full is the payment in whole of the principal amount of the mortgage Note in advance of expiration of the term of the mortgage Note.

The Installment Due Date is the first Day of the month, as provided for in the security instrument.

##### (B) Standard

The Mortgagee must accept a prepayment of a Mortgage in whole or in part on any Installment Due Date without penalty to the Borrower.

##### (C) Prepayment Procedures

###### (1) Mortgages Closed On or After January 21, 2015

The Mortgagee must accept a prepayment on a Mortgage closed on or after January 21, 2015, at any time and in any amount. The Mortgagee must calculate the interest as of the date the prepayment is received, not as of the next Installment Due Date.

###### (2) Mortgages Closed Before January 21, 2015

###### (a) Mortgages Insured On or After August 2, 1985

The Mortgagee must accept a prepayment on a Mortgage insured on or after August 2, 1985 and closed before January 21, 2015, if the Borrower prepays the Mortgage in full on the first Day of any month in the term of the Mortgage.

If prepayment is offered on a day other than the Installment Due Date, the Mortgagee may:

- refuse to accept the prepayment until the first Day of the next month;  
or
- accept the prepayment and require the payment of interest to the first Day of the next month. For Prepayment in Full, this option may only be used if the Mortgagee has provided the [Payoff Disclosure](#) to the Borrower.

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#### **(b) Mortgages Insured Prior to August 2, 1985**

##### **(i) Definitions**

Notice of Intent to Prepay refers to the advance notice that Borrowers on Mortgages insured before August 2, 1985 must provide in order to prepay their FHA-insured Mortgages in full without penalty.

The 30-Day Advance Prepayment Notice Period refers to the time requirement for the Borrower to provide advance notice to the Mortgagee for prepayment of an FHA-insured Mortgage insured prior to August 2, 1985.

##### **(ii) Standard**

The Mortgagee must accept prepayment on a Mortgage insured prior to August 2, 1985, if the Borrower:

- submits to the Mortgagee a Notice of Intent to Prepay at least 30 Days prior to the prepayment; and
- prepays the Mortgage in full on the first Day of any month in the term of the Mortgage.

If a prepayment is offered on a day other than the Installment Due Date, the Mortgagee may:

- refuse to accept the prepayment until the first Day of the month following the expiration of the 30-Day Advance Prepayment Notice Period; or
- accept prepayment and require the payment of interest to the first Day of the month following the expiration of the 30-Day Advance Prepayment Notice Period. For Prepayment in Full, this option may only be used if the Mortgagee has provided the Payoff Disclosure to the Borrower.

##### **(iii) Borrower's Notice of Intent to Prepay**

For Mortgages insured prior to August 2, 1985, the Borrower must send, and the Mortgagee must receive, the Borrower's Notice of Intent to Prepay at least 30 Days prior to prepayment.

If the Borrower submits a prepayment without previously sending a Borrower's Notice of Intent to Prepay, the Mortgagee may consider receipt of the prepayment as the Borrower's Notice of Intent to Prepay. The Mortgagee may choose to:

- provide a Payoff Disclosure, enabling the Mortgagee to:
  - defer acceptance of prepayment until the first Day of the month following the date prepayment is tendered; or

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- accept the prepayment and require the payment of interest to the first Day of the month following the date prepayment is tendered; or
- accept the prepayment on the date tendered, which limits the Mortgagee's collection of interest to that prepayment date.

#### **(iv) Effective Dates for Notice of Intent to Prepay**

The effective date of the Notice of Intent to Prepay is the date that the Notice was received by the Mortgagee, unless the Borrower can produce documentation showing that the Notice was received earlier. The 30-Day Advance Prepayment Notice Period required for Mortgages insured prior to August 2, 1985, begins on this date of receipt.

#### **(c) Installment Due Date Falls on a Non-Business Day**

When the Installment Due Date falls on a non-business day, the Mortgagee must consider a Borrower's Notice of Intent to Prepay or the receipt of the prepayment amount for a Mortgage closed before January 21, 2015 timely if received on the next business day.

#### **(3) Payoff Disclosure Requirements**

When notified of the Borrower's intent to prepay, the Mortgagee must send the [Payoff Disclosure](#) and copy of the payoff statement directly to the Borrower, even if the Mortgagee is dealing with an Authorized Third Party.

The Mortgagee will forfeit any interest collected after the date of prepayment if these disclosure requirements are not met.

#### **(D) Trustee's Fee for Satisfactions**

If specifically provided for in the security instrument, the Mortgagee may charge the Borrower the amount of the trustee's fee, plus any reasonable and customary fee for payment, or for the execution of a satisfaction, release or trustee's deed when the debt is paid in full.

#### **(E) Recording Fees for Satisfactions**

The Mortgagee may charge the Borrower a reasonable and customary fee for recording satisfactions in states where recordation is not the responsibility of the Mortgagee.

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###### f. Servicing Fees and Charges

###### i. Definition

Allowable Fees and Charges are those costs associated with the servicing of the Mortgage that are permitted to be charged to the Borrower.

Prohibited Fees and Charges are those costs associated with the servicing of the Mortgage that may not be charged to the Borrower.

###### ii. Standard

###### (A) Reasonable and Customary Fees and Charges

The Mortgagee may collect certain fees and charges from the Borrower after the Mortgage is insured and as authorized by HUD below. All fees must be:

- reasonable and customary for the local jurisdiction;
- based on actual cost of the work performed or actual out-of-pocket expenses and not a percentage of either the face amount or the unpaid principal balance of the Mortgage; and
- within the [maximum amount allowed by HUD](#).

###### (B) Prohibited Fees and Charges

The Mortgagee must not charge the Borrower for the following services:

- costs of telephone calls, personal visits with the Borrower, certified mail, or other activities that are normally considered a part of a prudent Mortgagee's servicing activity;
- Mortgagee's use of an independent contractor such as a tax service to furnish tax data and information necessary to pay property taxes or make the payments on behalf of the Mortgagee;
- preparing and providing evidence of Payoff, Reconveyance, or termination of the Mortgage;
- providing information essential to the Payoff;
- recording the Payoff of the Mortgage in states where recordation is the responsibility of the Mortgagee; or
- fees for services performed by attorneys or trustees who are salaried members of the Mortgagee's staff.

###### (C) Requests for Approval for Other Fees or Charges

The Mortgagee must request approval from the National Servicing Center (NSC) to charge the Borrower for any fee, charge, or service not specifically mentioned in this *SF Handbook*. The Homeownership Center (HOC) will determine the maximum amount of any fee based on what is reasonable and customary in the area.

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###### iii. Required Documentation

The Mortgagee must include in the servicing file:

- documentation of the amount of any fees and charges paid or payable by the Borrower; and
- documentation supporting the actual cost of any work performed or out-of-pocket expenses.

###### g. Escrow

###### i. Definition

An Escrow Account is a set of funds collected by the Mortgagee for payment of taxes, insurance, and other items required by the mortgage Note.

###### ii. Escrowing of Funds

###### (A) Standard

The Mortgagee must segregate escrow funds, including those funds escrowed at closing, and deposit the funds in a special custodial account characterized by the following:

- with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA);
- that does not limit the Mortgagee's access to funds, require an advance notice of withdrawal, or require the payment of a withdrawal penalty;
- that clearly identifies the type of funds being held in that account; and
- the Mortgagee may maintain a "cushion" that may not be increased beyond what is acceptable under RESPA regulations.

Mortgagees utilizing a Trust Clearing Account must withdraw the portion that is to be applied to escrows within 48 hours of the deposit and must transfer the portion to the escrow account for the Borrower's Mortgage.

Mortgagees are not prohibited from holding escrow funds for all types of Mortgages in a single bank account; however, the Mortgagee must not commingle escrow funds, even temporarily, with funds used for the Mortgagee's general operating purposes.

###### (B) Interest on Escrows

HUD regulations neither forbid nor require that escrow accounts earn interest.

However, if escrow funds are invested, the Mortgagee must pass on to the Borrower the net income derived from the investment in accordance with the following:

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- The Mortgagee must make investments and payments in compliance with state and federal agency requirements governing the handling and payment of interest earned on a Borrower's escrow account.
- The Mortgagee may only deduct the actual cost of administering the interest-bearing account before passing on to the Borrower the net earnings from the investment of their funds.
- The Mortgagee may not charge the Borrower expenses for maintaining the interest-bearing escrow account in an amount exceeding the gross interest earned from investing the funds in that account.

#### (C) Items to be Escrowed

The Mortgagee must require that the Borrower's total Mortgage Payment includes escrow funds to provide for payment of property charges in accordance with [24 CFR § 203.23](#), the security instrument, and applicable law. Items to be escrowed include:

- real estate taxes;
- special assessments, including any assessments related to a PACE obligation;
- Hazard Insurance required by the Mortgagee;
- flood insurance as applicable;
- FHA MIP;
- Ground Rent, if any; and
- other items which can attain priority over the security instrument as a lien or encumbrance on the Property, other than Condominium or Homeowners' Association (HOA) Fees.

#### (D) Required Documentation

The Mortgagee must retain documentation of its holding of all escrow funds on deposit.

#### iii. Escrow Analysis

The Mortgagee must perform analysis, at least annually, of the escrow account to provide for adequate collections to pay escrow bills when due without creating excessive surpluses. The Mortgagee must begin these analyses no later than the end of the second year of the life of the Mortgage.

The Mortgagee must retain any escrow surplus discovered when performing the annual escrow account analysis for a Delinquent Mortgage pursuant to the terms of the mortgage documents and federal law and regulation, including RESPA.

#### iv. Processing Payments from Escrow Accounts

When making payments from escrow accounts, Mortgagees must:

- send payment directly to the billing agency or the taxing authority, or as otherwise directed by state or local law;

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- request a bill from the billing agency if a bill has not been received within a reasonable amount of time before the payment due date;
- contact the Borrower, if necessary, to obtain the bill or the information needed to pay such bills if a bill is not received within a reasonable amount of time before the known payment due date; and
- make Disbursements as bills become payable, even if making the payment requires advancing corporate funds when the escrow deposits are inadequate to meet these obligations.

The Mortgagee may contract with a tax service organization to manage the payment of taxes.

#### **(A) Timeliness of Payments from Escrow Accounts**

##### **(1) Standard**

The Mortgagee must ensure that all Disbursements are made as bills become payable.

If the Mortgagee fails to timely disburse escrow proceeds, the Mortgagee is prohibited from passing on to the Borrower any penalties resulting from the late payments unless:

- the late payment was the result of the Borrower's error or omission; and
- the Mortgagee attempted to obtain the billing information from the Borrower, billing agency, or the taxing authority in sufficient time to enable it to timely make the Disbursement.

##### **(2) Required Documentation**

The Mortgagee must document in its servicing file its efforts to obtain the billing information from the Borrower, billing agency, or the taxing authority.

#### **(B) Payment of Insurance Premiums**

##### **(1) Long-term Policies**

###### **(a) Definition**

Long-term Policies refer to those insurance policies with terms of greater than one year.

###### **(b) Standard**

The Mortgagee may not reject a long-term policy if the carrier and amount are otherwise acceptable to the Mortgagee.

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###### (c) Collecting Funds for Renewal Premiums

The Mortgagee may collect funds for renewal premiums on long-term policies in the following ways:

- For renewal with the same policy term: The Mortgagee may immediately begin collecting a monthly amount calculated to make funds available 30 Days before the policy expires; or
- For renewal with a one-year term: The Mortgagee may defer collection of monthly escrows until 13 months before the expiration date of the policy then begin monthly collection of 1/12th of the renewal premium for a policy providing similar coverage.

The Mortgagee may require a Borrower wishing to renew for a longer term to make a lump sum deposit to escrow for the additional amount required to pay the renewal premium with the Mortgagee 30 Days before the expiration date of the present policy. If the additional deposit is not made, the Mortgagee may renew the policy for one year and continue to escrow as for a one-year policy.

###### (2) Optional Policies

###### (a) Standard

The Mortgagee may advance corporate funds when the escrow deposits are inadequate to meet obligations for payment of premiums for optional insurance coverage, but the Mortgagee must not charge against the escrow account any funds for these advances.

###### (i) Personal Property and Personal Liability Insurance

The Mortgagee must only escrow for the payment of Personal Property and personal liability insurance coverage premiums if:

- the Borrower has obtained Personal Property and personal liability insurance coverage not directly related to the mortgaged Property; and
- the premiums are combined with Hazard Insurance in one insurance premium payment.

###### (ii) Life Insurance and Disability Insurance

Mortgagees may not deposit premiums for life or disability insurance coverage in the same bank accounts as other escrow payments.

The Mortgagee must maintain separate records for these life or disability insurance coverage payments.

HUD does not require Mortgagees to itemize the Borrower's monthly contribution for life or disability coverage on payment coupons.



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###### (b) Required Documentation

The Mortgagee must note on the initial and annual escrow statements any Borrower's discretionary payment made as part of a monthly Mortgage Payment for optional policies.

###### (3) Insurance Protecting Only the Mortgagee

The Mortgagee must not charge the Borrower any part of the cost of insurance coverage that does not benefit the Borrower.

###### v. Use of Escrow Funds

The Mortgagee must only use escrow funds for the purpose for which they were collected.

The Mortgagee must never deduct amounts from a Borrower's escrow account to pay the following:

- penalties for late payments not directly resulting from the Borrower's error or omission;
- attorney's fees incurred in foreclosure actions that are not completed;
- inspection fees; and
- mortgage Delinquencies or refunds of overpaid subsidy.

###### h. Insurance Coverage Administration

###### i. Hazard Insurance

If the Mortgagee requires the Borrower to purchase hazard insurance, the Mortgagee must:

- allow Borrowers to choose their own hazard insurance company;
- be named as a "Loss Payee" on the hazard insurance policy; and
- escrow sufficient funds for the payment of renewal premium.

###### (A) Payment of Renewal Premium

When the Mortgagee has required the Borrower to purchase hazard insurance, the Mortgagee must escrow for premium payments and pay renewal premiums by

- remitting the renewal premium from available escrow funds; or
- where insufficient escrow funds exist, advancing corporate funds for the payment of the renewal premium.

The Mortgagee must not insist on more coverage than is necessary to protect its investment. The Mortgagee must escrow renewal premiums for the entire amount if the Borrower chooses to insure the Property for more than the minimum amount.

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#### **(B) Fee for Change in Hazard Insurance Policy**

The Mortgagee may assess a reasonable and customary fee, up to the amount listed in [Appendix 3.0](#), for processing the Borrower's request to change hazard insurance coverage when the existing policy has not yet expired.

#### **ii. Flood Insurance**

For Properties located within a Special Flood Hazard Area (SFHA), the Mortgagee must ensure that insurance is in force for the life of the Mortgage or so long as such coverage remains available, unless the area in which the Property is located is no longer designated as an SFHA. If, due to rezoning, a Property securing an FHA-insured Mortgage becomes located in an SFHA, the Mortgagee must enforce HUD's flood insurance requirements on coverage amounts and maintenance.

#### **iii. Hazard or Flood Insurance Proceeds**

##### **(A) Insurance Claims**

The Mortgagee must take necessary steps to ensure that hazard or flood insurance claims are filed and settled as expeditiously as possible.

##### **(B) Loss Settlement Amounts for Borrower Expenses and Personal Property**

The Mortgagee must promptly release to the Borrower all insurance settlement proceeds received for coverage of a Borrower's Personal Property, temporary housing, and other transition expenses. The Mortgagee may not withhold Disbursement of such proceeds to cover an existing arrearage without the written consent of the Borrower.

##### **(C) Insurance Proceeds for Home Damage**

###### **(1) Definition**

A Viable Repair Plan is a plan for repairs of a mortgaged Property within the amounts available through insurance proceeds and borrower funds.

###### **(2) Standard**

The Mortgagee must expedite the release of insurance proceeds for needed home repairs after approving a Viable Repair Plan.

##### **(D) Application of Insurance Proceeds to Unpaid Principal Balance**

The Mortgagee may only apply insurance proceeds payable for home damages to arrearages and/or reduction of the unpaid principal balance if:

- the amount of the proceeds exceeds the costs to repair the damages to the home; or

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- the insurance proceeds are insufficient to repair the home damages based on a certified repair estimate, and the Borrower is unable to demonstrate that they have additional funds from other sources to complete the repairs.

#### iv. Optional Policies

##### (A) Personal Property and Personal Liability Insurance

The Mortgagee may allow the Borrower to add Personal Property and personal liability insurance premiums to their monthly payments.

##### (B) Life or Disability or Optional Coverage Income Policies

The Mortgagee must clearly separate the collection of unpaid optional coverage premiums from the collection of any unpaid Mortgage Payment. If the payment does not include all or a part of an optional coverage premium, the Mortgagee may not treat the failure to pay as a failure to pay a part of the Mortgage Payment.

#### i. Mortgage Insurance Premium Remittance

##### i. Definition

Annual or Periodic MIPs are those MIPs that are remitted to HUD each month.

##### ii. Standard

The Mortgagee must remit one-twelfth of the annual MIPs each month to HUD, regardless of whether it was received from the Borrower. The Mortgagee can access the Advance Premium Notice and case-level billing information in FHAC to determine monthly collections of MIPs after the first premium year.

The Mortgagee must remit MIPs in accordance with the original amortization schedule. MIPs accrue from the beginning of amortization, without regard to what time frame exists between endorsement and the beginning of amortization and without regard to any Partial Prepayments, Delinquent payments, agreements to postpone payments, or agreements to recast the Mortgage.

For refinances, the Mortgagee must remit MIPs on the Mortgage being paid off through the month in which that Mortgage is paid in full.

##### iii. Mortgage Insurance Premium Reports

##### (A) Use of FHAC

The Mortgagee can access the Advance Premium Notice and case-level billing information in FHAC to determine monthly collections of MIPs after endorsement.

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#### (B) Reports after Transfer or Sale

If, 90 Days after acquisition, a transferred or sold Mortgage has not appeared on HUD's monthly MIP report to the Transferee Servicing Mortgagee or Purchasing Mortgagee, that Mortgagee must ensure that the Servicer/Holder Transfer is completed in [FHAC](#).

#### j. Post-Endorsement Mortgage Amendments

##### i. Definition

A Post-Endorsement Mortgage Amendment is a change to the mortgage instruments, the nature of the obligation, or the security after the Mortgage has been insured.

##### ii. Modifying a Performing Mortgage

#### (A) Modification without HUD Approval

The Mortgagee may modify a performing Mortgage without HUD approval when:

- the modification is only for a reduction of the interest rate;
- the mortgage term is decreased and the Principal and Interest (P&I) will be increased \$100 or less per month; or
- the mortgage term is decreased and the Mortgage is more than three years old.

#### (B) Modification Requiring HUD Approval

The Mortgagee must request and receive approval from the [NSC](#) prior to modifying a performing Mortgage when the mortgage term is decreased and:

- the P&I will increase over \$100 per month; or
- the Mortgage is three years old or less.

The Mortgagee may modify the Mortgage to decrease the mortgage term by increasing the monthly payment so long as all of the following conditions are met:

- The Mortgagee has received HUD approval.
- The Mortgage is current and the Borrower's payment history is satisfactory to the Mortgagee.
- The Mortgagee has determined that the higher monthly payment is within the Borrowers' ability to pay under the [underwriting standards in Origination through Post-Closing/Endorsement](#).
- The modification agreement contains a clause permitting reversion to original mortgage terms if reversion can salvage a Delinquent account and prevent foreclosure.
- The modification agreement contains a certification by the Borrowers stating that they are aware of the positive and negative aspects of the modification and that they have voluntarily agreed to the increased payments.

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#### (C) Principal Amount of Modified Performing Mortgage

The new principal amount of the modified Mortgage is the total unpaid amount due and payable under the original Mortgage. The Mortgagee may not include the following in the new principal amount:

- any revision of periodic MIP payments; and
- any legal or administrative costs attributable to the modification (these costs may be collected separately from the Borrower).

#### (D) Recordation of Lien

The Mortgagee must perform the legal steps required to accomplish the modification and must ensure that the Mortgage remains a valid first lien against the Property.

#### (E) Fee for Modification of Performing Mortgage

The Mortgagee may charge the Borrower a [reasonable and customary fee](#) for processing and recording a modification of a performing Mortgage when not modified under [HUD's Loss Mitigation Program](#). The Mortgagee may not file an incentive claim for modifying a performing Mortgage.

#### (F) Required Documentation

##### (1) Servicing File

When modifying a performing Mortgage, the Mortgagee must retain the following in their servicing files:

- a mortgage modification document, in the form of:
  - an amended original Note, with all changes initialed by all parties; or
  - a modification agreement executed by all parties;
- documentation evidencing that criteria for modifying the Mortgage with or without HUD approval, as appropriate, were met;
- documentation showing calculations of the modified principal amount and the new monthly payment amount; and
- proof that any unpaid escrow added to the new principal amount was credited to the Borrower's escrow account.

##### (2) Reporting to HUD

The Mortgagee must report mortgage characteristics for all modifications through [FHAC](#).

**iii. Partial Release or Modification of Security**

**(A) Partial Releases from Condemnation Not Requiring HUD Approval**

**(1) Standard**

The Mortgagee may execute a partial release of security without HUD approval if the partial release results from condemnation and all of the following conditions are met:

- the portion of the Property being conveyed does not exceed 10 percent of the area of the mortgaged Property;
- there is no damage to existing Structures or other improvements;
- there is no unrepaired damage to sewer, water, or paving;
- the Mortgagee has applied all of the payment received as compensation for the taking of the Property to reduce the unpaid principal balance of the Mortgage; and
- the government action requiring conveyance occurs after insurance of the Mortgage.

**(2) Required Documentation**

**(a) Claim Review File**

If the Mortgagee files a claim for mortgage insurance benefits, the Mortgagee must submit a certification that the requirements for partial releases of security as a result of condemnation have been met and retain a copy of the certification in the Claim Review File.

**(b) Reporting to HUD**

The Mortgagee must notify the [Appropriate HOC](#) of the release by letter within 30 Days of the Mortgagee's signing of the release.

**(B) Partial Releases or Modification of Security Requiring HUD Approval**

**(1) Definition**

Partial Release or Modification of Security is the conveyance, assignment, transfer, pledge, or encumbrance of any part of the mortgaged Property or any interest in the mortgaged Property other than a [Partial Release from Condemnation Not Requiring HUD Approval](#) or other title exceptions covered under the general waiver. The partial release or modification of security may be a:

- partial release;
- condemnation;
- order of taking;
- subordination or consent to Easement;
- lot line dispute/adjustment;

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- subdivision consent; or
- consent to change in covenants and restrictions.

#### (2) Request Process

The Mortgagee must obtain HUD approval for any partial release or modification of security. The Mortgagee must send the following to the Jurisdictional [HOC](#) for the Property:

- a request containing the following information:
  - whether or not the Mortgage is in good standing;
  - the amount of the outstanding principal balance;
  - the due date of the last unpaid installment;
  - if the Mortgage is Delinquent, the number of Delinquent payments;
  - a list of unpaid special assessments, if any, and the total amount payable;
  - a complete legal description of the Property to be released or modified;
  - the Borrower's reasons for requesting that the Mortgagee make the partial release or modification of security, including how the land to be released or modified will be used;
  - the monetary consideration, if any, to be received by the Borrower;
  - the amount of a prepayment, if any, to the mortgage principal;
  - any restrictions to be imposed on the land to be released or modified;
  - and
  - the case number of the mortgaged Property;
- a survey or sketch of the Property showing:
  - the dimensions of the portion to be released or modified;
  - the location of existing and proposed improvements; and
  - the relation of the Property to surrounding properties;
- plans and specifications, including Cost Estimates of any alterations proposed for the remaining Property after the release or modification; and
- a valid [FHA appraisal](#) that reflects:
  - the value before the partial release or modification of security; and
  - the value of the remaining Property after the partial release or modification of security.

#### (3) HUD Review

HUD will process the request for the partial release or modification of security and notify the Mortgagee of the approval or rejection in writing.

#### (4) Required Documentation

The Mortgagee must retain a copy of HUD's approval or rejection in the servicing file.

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#### (C) Fees

The Mortgagee may charge the Borrower reasonable and customary fees, up to the amounts listed in [Appendix 3.0](#), involved in processing [Partial Releases from Condemnation Not Requiring HUD Approval](#) or a [Partial Release or Modification of Security Requiring HUD Approval](#).

#### iv. Change of Location of Dwelling or Improvements

##### (A) Relocation Requiring HUD Approval

###### (1) Request to HUD

Except in the emergency situations described in [Emergency Relocation Not Requiring HUD Approval](#), the Mortgagee must obtain HUD approval prior to relocation. The Mortgagee must submit the following to the FHA Resource Center at [answers@hud.gov](mailto:answers@hud.gov):

- the Mortgagee's request for a change in improvement location; and
- supporting documentation, including architectural exhibits, a copy of the permit, and a description of materials.

HUD will analyze the request and notify the Mortgagee of the approval or denial of the request.

###### (2) Relocation Requirements

The Mortgagee must ensure that relocations are performed as follows:

- the Mortgagee obtains a good and valid first lien on the new lot;
- the lien of the insured Mortgage has been extended to cover the new lot and the old lot has or has not been released from the lien, as appropriate;
- all damages to the Structure before, during, or after the relocation are repaired without cost to HUD; and
- the new lot is in an area known to be reasonably free from natural hazards or, if in an SFHA, the community participates in the National Flood Insurance Program (NFIP) and the Property will be insured against floods.

###### (3) Required Documentation

The Mortgagee must retain a copy of HUD's approval or denial in the servicing file.

After the move has been completed and the appropriate substitute documents have been recorded, the Mortgagee must forward to HUD any documentation regarding the changes in the nature of the lien and retain copies in the servicing file.



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### **(B) Emergency Relocation Not Requiring HUD Approval**

#### **(1) Permanent Relocation**

##### **(a) Standard**

The Mortgagee may consent to the relocation of existing improvements in emergency situations, where immediate action must be taken to preserve the safety of the occupants and/or the undamaged condition of the existing improvements, without HUD approval.

##### **(b) Notification to HUD of Completed Permanent Relocation**

The Mortgagee must notify the [NSC](#) within 30 Days of the completed permanent relocation and submit a supplementary case binder containing supporting documentation for the change in improvement location.

The Mortgagee must include the following in its notification of the completion of the permanent relocation:

- the FHA case number of the mortgaged Property;
- the address and legal description of the lot of the improvement's previous location and the address and legal description of the new permanent location;
- a statement that HUD regulatory requirements have been met;
- a statement that the original Note is in full force and effect; and
- the outstanding balance of the insured Mortgage, and, if Delinquent, the number of payments, the dollar amount of the delinquency, and an explanation of how the delinquency is expected to be cured.

##### **(c) Required Documentation**

The Mortgagee must retain in the servicing file a copy of its notification of the completion of the permanent relocation.

#### **(2) Temporary Relocation**

##### **(a) Standard**

When a temporary move becomes necessary, the Mortgagee may consult the [NSC](#) before the move, for written assurance that the mortgage insurance will not be affected adversely during the move.

All damages to the Structure before, during, or after the relocation have been or will be repaired without cost to HUD.

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###### (b) Notification to HUD of Completed Temporary Relocation

Within 30 Days of the completion of the temporary relocation, the Mortgagee must submit written notification to the NSC, advising that the temporary relocation has been completed. This notification must include the following:

- the FHA case number of the mortgaged Property;
- the address and legal description of the lot of the improvement's previous location and the address and legal description of the new temporary lot; and
- a statement that:
  - the move to the temporary lot has been accomplished; and
  - any damage caused by the temporary move has been or will be repaired at no cost to HUD.

###### (c) Required Documentation

The Mortgagee must retain in the servicing file a copy of the notification to HUD of completed temporary relocation.

#### k. Mortgage Insurance Premium Cancellation

##### i. Definition

MIP Cancellation is the end of the obligation to remit the FHA MIPs to HUD on an FHA-insured Mortgage closed on or after January 1, 2001, and assigned a case number before June 3, 2013. Standard

The policies in this section apply only to FHA-insured Mortgages that:

- closed on or after January 1, 2001; and
- have a case number assignment before June 3, 2013.

HUD automatically cancels FHA MIPs under the conditions set forth below. The Loan-to-Value (LTV) ratio is based on the principal balance excluding Upfront MIP (UFMIP). The FHA contract of insurance remains in force for the Mortgage's full term, unless otherwise terminated.

HUD will not consider new appraised values in calculating if the Borrower has reached the required LTV ratio necessary for annual MIP cancellation.

HUD bases the cancellation of the annual MIP on the initial amortization schedule. In cases where Mortgage Payments have been accelerated or modified, HUD may base cancellation on the actual amortization of the Mortgage as provided to HUD by the servicing Mortgagee.

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###### **(A) Mortgage Term of More Than 15 Years**

For Mortgages with terms more than 15 years, HUD automatically cancels the annual MIP when the LTV ratio reaches 78 percent of the lesser of the initial sales price or appraised value at origination, provided the Borrower has paid the annual MIP for at least five years.

###### **(B) Mortgage Term 15 Years or Less and LTV Ratio of Greater than 90 Percent with Case Numbers Assigned on and after July 14, 2008, and Before June 3, 2013**

HUD automatically cancels the annual MIP when the LTV ratio reaches 78 percent of the lesser of the initial sales price or appraised value at origination regardless of the length of time the Borrower has paid the annual MIP for Mortgages that:

- have terms 15 years or less;
- have a case number assigned on and after July 14, 2008, and before June 3, 2013; and
- have LTV ratios greater than 90 percent.

###### **(C) Mortgage Term 15 Years or Less and LTV Ratio of 90 Percent and Greater, Closed on or after January 1, 2001, and with Case Numbers Assigned before July 14, 2008**

HUD automatically cancels the annual MIP when the LTV ratio reaches 78 percent of the lesser of the initial sales price or appraised value regardless of the length of time the Borrower has paid the annual MIP for Mortgages that:

- have terms 15 years or less;
- closed on or after January 1, 2001, but have their case number assigned before July 14, 2008; and
- have LTV ratios 90 percent or greater.

###### **(D) Mortgage Term 15 Years or Less and LTV Ratio Greater than 78 percent but Equal or Less Than 90 Percent**

HUD automatically cancels the annual MIP when the LTV ratio reaches 78 percent of the lesser of the initial sales price or appraised value at origination regardless of the length of time the Borrower has paid the annual MIP for Mortgages that:

- have terms 15 years or less;
- have case numbers assigned on or after April 18, 2011; and
- have LTV ratios of greater than 78 percent but equal to or less than 90 percent.

HUD does not charge annual MIP for Mortgages that:

- have terms 15 years or less; have a case assigned on or after April 18, 2011, but before June 3, 2013; and have LTV ratios of 78 percent or less;

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- have terms 15 years or less; have a case number assigned on or after July 14, 2008 but before April 18, 2011; and have LTV ratios of 90 percent or less; or
- have terms 15 years or less; closed on or after January 1, 2001 and have a case number assigned before July 14, 2008; and have LTV ratios of less than 90 percent.

#### **(E) Borrower-Initiated Cancellation of MIP**

A Borrower who meets the following requirements may request cancellation of the collection of annual MIPs through their Mortgagee when:

- the Borrower has reached the 78 percent threshold in advance of the scheduled amortization due to Borrower prepayments to the principal, but not sooner than five years from the Closing Date, except for 15-year term Mortgages; and
- the Borrower has not been more than 30 Days Delinquent on the Mortgage during the previous 12 months.

As part of the Mortgagee's annual disclosures to Borrowers, Mortgagees must notify Borrowers of their option to cancel the annual MIP in advance of the projected amortization date by making additional payments of mortgage principal.

#### **(F) Artificial Principal Payment Reduction (This section affected by Waiver of Artificial Principal Payment Reduction Requirement (12/16/2019))**

A Borrower with an outstanding Partial Claim/second Mortgage is not eligible to cancel their MIP even if all other above requirements have been satisfied.

#### **(G) Processing MIP Cancellation**

The Mortgagee must process the MIP cancellation using the Monthly MIP cancellation function in [FHAC](#).

#### **ii. Cancellation of MIP on Mortgages with Case Numbers Assigned on or after June 3, 2013**

For Mortgages with FHA case numbers assigned on or after June 3, 2013, HUD automatically cancels FHA MIP as stated in [Appendix 1.0 - Mortgage Insurance Premiums](#).

#### **iii. Distributive Shares**

##### **(A) Definition**

A Distributive Share is a share of any excess earnings from the Mutual Mortgage Insurance Fund (MMIF) that may be distributed to a Borrower after mortgage insurance termination.

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### **(B) Payment of Distributive Shares**

At HUD's discretion, HUD may pay Distributive Shares when mortgage insurance is terminated. Upon termination of the FHA mortgage insurance of a Mortgage, HUD will determine if Distributive Shares are available.

HUD is not liable for unpaid Distributive Shares that remain unclaimed six years from the date notification was first sent to the Borrower's last known address.

### **I. Mortgage Insurance Termination**

#### **i. Definition**

A Mortgage Insurance Termination is the ending of FHA Single Family mortgage insurance at which time the Mortgagee's obligation to remit MIP to HUD ends. Upon termination, the Borrower and Mortgagee will enjoy only those rights, if any, to which they would be entitled under the National Housing Act if the insurance contract terminated as a result of the insured Mortgage being paid in full.

#### **ii. Standard**

### **(A) Termination of Mortgage Insurance**

HUD terminates the FHA insurance contract as follows:

- automatically when the Mortgage reaches maturity; or
- when the Mortgagee reports a termination code, such as:
  - prepayment (Borrower paid the Mortgage in full before the maturity date);
  - use of Home Disposition Option or non-conveyance foreclosure (the Property was acquired by a Mortgagee or third party at a foreclosure sale or was redeemed after foreclosure and no insurance claim or Claims Without Conveyance of Title (CWCOT) will be submitted to HUD);
  - conveyance for insurance benefits; or
  - voluntary termination (both the Mortgagee and Borrower agreed to voluntarily terminate FHA insurance).

The Mortgagee must report termination of a case to HUD via FHAC, Business to Government (B2G), or the Electronic Data Interchange (EDI) within 15 Days of the actual event.

### **(B) Voluntary Termination of Mortgage Insurance**

#### **(1) Definition**

A Voluntary Termination of Mortgage Insurance is when the Secretary, upon the mutual request of the Borrower and Mortgagee, terminates the FHA insurance contract associated with the Mortgage.

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###### (2) Standard

The Borrower and the Mortgagee may agree to voluntarily terminate FHA mortgage insurance in accordance with Section 229 of the National Housing Act (12 U.S.C. § 1715(t)). A voluntary termination has the same effect on the Borrower and Mortgagee as a termination for payment in full.

###### (a) Borrower's Consent to Voluntary Termination

The Mortgagee must obtain a signed Borrower's Consent to Voluntary Termination of FHA Mortgage Insurance from each Borrower on the Mortgage.

###### (b) Request for Voluntary Termination

To request voluntary termination, the Mortgagee must:

- submit the request for voluntary termination of mortgage insurance via [FHAC](#) within 15 Days of receiving the executed Borrower's Consent form; and
- certify in [FHAC](#) that all Borrowers on the Mortgage have signed the consent form.

###### (C) Effective Date of Termination

###### (1) Standard

The effective date of termination of the contract of insurance is the last Day of the month in which one of the following occur:

- the date a voluntary termination request is received by the Commissioner;
- the date the Mortgage was prepaid; or
- where the Mortgagee notifies the Commissioner that a claim will not be filed, the date foreclosure proceedings were initiated or the Property was acquired by another party, including the Mortgagee.

###### (2) Required Documentation

The Mortgagee must note in the servicing file and report in FHAC, B2G, or EDI the date on which the voluntary termination request is received by the Commissioner; the date notice is received by the Commissioner that the Mortgage was prepaid; or the date notice is received by the Commissioner that a claim will not be filed, or that the Property will not be conveyed. For FHA-to-FHA refinances, the Mortgagee processing the new refinance must report the projected and actual Closing Date.

###### (D) MIP Due Until Effective Date of Termination

The Mortgagee is obligated to pay MIP due until the effective date of termination.

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###### **(E) Escrow Balance Returned to Borrower**

If no claim for insurance benefits will be filed, the Mortgagee must timely release the funds held in escrow in accordance with federal regulations, including RESPA, after the termination of the FHA-insured Mortgage.

###### **(F) Effect of Voluntary Termination on Outstanding Partial Claims**

Upon receipt of a Borrower's request for a voluntary termination, Mortgagees must advise the Borrower that the Partial Claim Promissory Note and Subordinate Mortgage amounts owed by the Borrower will become immediately due and payable upon termination if provided for under the terms of the Borrower's partial claim promissory note.

#### **m. Disclosures**

##### **i. Statement of Escrow Account**

At the Borrower's request, the Mortgagee must promptly furnish a statement of the escrow account in a clear and understandable form, with sufficient information to permit the Borrower to reconcile the account.

##### **ii. Payoff Disclosure**

###### **(A) Definition**

A Payoff Disclosure is a disclosure accompanying the payoff statement and, for Mortgages closed before January 21, 2015, describing the procedures for prepayment of a Mortgage.

###### **(B) Standard**

When notified of the Borrower's intent to prepay a Mortgage, the Mortgagee must send to the Borrower directly the Payoff Disclosure and copy of the payoff statement.

###### **(C) Required Documentation**

The Mortgagee must retain a copy of the Payoff Disclosure in the servicing file.

##### **iii. Annual Prepayment Disclosure Statements**

###### **(A) Definition**

An Annual Prepayment Disclosure Statement is a statement of the amount outstanding on the Mortgage and, for Mortgages closed before January 21, 2015, the requirements that the Borrower must fulfill upon prepayment to prevent accrual of interest after the date of prepayment.

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###### (B) Standard

The Mortgagee must provide the Borrower with a written [Annual Prepayment Disclosure Statement](#) on an annual basis.

###### (C) Required Documentation

The Mortgagee must retain a copy of the Annual Prepayment Disclosure Statement in the servicing file.

#### iv. Statement for Income Tax Purposes

##### (A) Definition

The Statement for Income Tax Purposes is an Internal Revenue Service (IRS) Form 1098, *Mortgage Interest Statement*, or equivalent that provides documentation of taxes and interest paid by the Borrower during the preceding calendar year.

##### (B) Standard

The Mortgagee must provide the Borrower with a Statement for Income Tax Purposes by January 30 of each year.

##### (C) Required Documentation

The Mortgagee must retain a copy of each annual Statement for Income Tax Purposes in the servicing file.

#### n. Record Retention – Servicing File

##### i. Definition

The Servicing File is the Mortgagee's record of all servicing activity on an FHA-insured Mortgage.

##### ii. Standard

Mortgagees must retain all servicing files for a minimum of seven years after the transfer or sale of the Mortgage or termination of mortgage insurance. The Mortgagee must maintain accurate records for each Mortgage serviced. In addition to the specific documentation requirements stated in this *SF Handbook*, these records must include the following information:

- mortgage origination and endorsement documentation, including copies of the following documents, if applicable:
  - the Conditional Commitment for insurance;
  - the Firm Commitment;
  - form HUD-92900-LT, *FHA Loan Underwriting and Transmittal Summary*;
  - and



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- the Mortgage Insurance Certificate (MIC);
- MIP payments made;
- documentation related to any recovery of hazard insurance proceeds; and
- the FHA-insured Mortgages in the Mortgagee's portfolio and information on which Mortgages have been acquired, sold, paid in full, and voluntarily terminated.

The Mortgagee must also retain, in electronic and hard copy, the Mortgage, mortgage Note, deed of trust, or a lost note affidavit acceptable under state law, with the electronic copy marked "copy."

For cases for which a claim is filed, the Mortgagee must retain documentation in compliance with the [Claim Review File](#) section for at least seven years after the final claim or latest supplemental claim settlement date.

##### iii. Record Reconciliations

HUD may require Mortgagees to provide information evidencing reconciliation of Mortgagee records with HUD. This information may include identification, by Mortgage, of the following:

- amount of MIP due and paid to HUD by time period for each insured Mortgage;
- date insurance was terminated or servicing transferred, if applicable; and
- date servicing was acquired, for Mortgages acquired after September 1, 1982.

All Mortgagees must ensure that HUD's records accurately reflect the status of the Mortgage and both the correct Mortgage Holder and Servicer of record.

##### iv. Electronic Storage

Where retention of a hard copy or original document is not required, Mortgagees may use electronic storage methods for all servicing-related documents required in accordance with HUD regulations, handbooks, Mortgagee Letters, and notices.

Regardless, the Mortgagee must be able to make available to HUD in the format (electronic or hard copy) requested legible documents within 24 hours of a request or as otherwise prescribed by HUD.

#### 2. Default Servicing

##### a. Mortgages in Delinquency or Default

##### i. Definitions

A Mortgage is Delinquent any time a Mortgage Payment is due and not paid.

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If the Borrower fails to make any payment or perform any other obligation under the Mortgage, and such failure continues for a period of 30 Days, the Mortgage is considered in Default.

The Date of Default is 30 Days after:

- the first uncorrected failure to perform any obligation under the Mortgage; or
- the first failure to make a monthly payment which subsequent payments by the Borrower are insufficient to cover when applied to the overdue monthly payment in the order in which they become due.

##### ii. Standard

The Mortgagee must ensure FHA-insured Mortgages in Delinquency or Default are serviced in accordance with FHA requirements and applicable laws.

For the purpose of determining the date of Default and timelines related to Default, HUD considers all months to have 30 Days.

##### b. HUD Default Servicing Contact

The [National Servicing Center \(NSC\)](#) in Oklahoma City, Oklahoma, manages HUD's Loss Mitigation Program. HUD NSC staff is available to provide customer service to Mortgagees, Servicers, counselors, other authorized representatives, and Borrowers on loss mitigation issues.

##### c. Reporting to Consumer Reporting Agencies and the IRS

The Mortgagee is responsible for:

- complying with applicable law and federal regulations relating to reporting to consumer reporting agencies; and
- ensuring that all reported information is accurate.

The Mortgagee is also responsible for any required IRS reporting regarding acquisition of secured Property or cancellation of mortgage debt, in accordance with the Internal Revenue Code (IRC).

##### d. Late Charges

##### i. Definition

Late Charges are charges assessed if a Mortgage Payment is received more than 15 Days after the due date.

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###### ii. Standard

The Mortgagee may consider a Borrower's payment late if the payment is received by the Mortgagee more than 15 Days after the due date. The Mortgagee may assess a late charge on the 17<sup>th</sup> Day of the month.

For Mortgages assigned a case number on or after March 14, 2016, the Mortgagee may assess a Late Charge, not to exceed 4 percent of the overdue payment of Principal and Interest (P&I) and in accordance with applicable law.

For Mortgages assigned a case number before March 14, 2016, the Mortgagee may assess a Late Charge calculated based on overdue PITI if permitted under the terms of the mortgage Note and under applicable law.

###### (A) Notifying the Borrower of the Late Charge

Before collecting the Late Charge or returning a Mortgage Payment to the Borrower for failing to pay the Late Charge, the Mortgagee must provide the Borrower with an advance written notice of the charge.

The Mortgagee must include in the advance notice the following information:

- the due date of the payment;
- the amount of the regular monthly payment;
- the date on which the Late Charge will be imposed; and
- the amount of the Late Charge (or the full amount now due which consists of the regular monthly payment plus the Late Charge amount).

###### (B) Application of Subsequent Payment to Unpaid Late Charges

After advance notice has been sent to the Borrower, the Mortgagee may:

- treat any subsequent payment that does not include the Late Charge in accordance with HUD's [Partial Payment](#) section; and
- deduct amounts due for Late Charges owed for a previous installment.

###### (C) Default/Foreclosure Due to Unpaid Late Charges

A Mortgage may be technically in Default by its terms if a Late Charge is not paid within 30 Days after it becomes due. However, the Mortgagee may not initiate foreclosure action when the only delinquency is due to:

- unpaid Late Charges that are due on the account; and/or
- unpaid monthly payments that remain unpaid because the Mortgagee did not comply with HUD's [Partial Payments for Mortgages in Default](#) section.

###### iii. Required Documentation

The Mortgagee must ensure that its servicing file reflects any Late Charges assessed and includes any advance written notice of such charges sent to the Borrower.

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#### e. Partial Payments for Mortgages in Default

##### i. Acceptance of Partial Payments

Unless subject to the exceptions in the [Return of Partial Payments for Mortgage in Default](#) section, the Mortgagee must accept any Partial Payment and either:

- apply the payment to the Borrower's account; or
- identify the payment with the Borrower's account and hold the payment in a suspense account. When a full monthly installment due under the Mortgage is accumulated, the Mortgagee must apply that amount to the Borrower's account.

##### ii. Application of Partial Payments Totaling a Full Monthly Payment

###### (A) Standard

When Partial Payments held for disposition total a full monthly payment, the Mortgagee must apply Borrower payments in the following order:

- to Mortgage Insurance Premiums (MIP) due, if any;
- to charges for Ground Rents, taxes, special assessments, including any assessments related to a Property Assessed Clean Energy (PACE) obligation, flood insurance premiums, if required, and fire and other hazard insurance premiums;
- to interest on the Mortgage;
- to amortization of the principal of the Mortgage; and
- to Late Charges, provided, however, that any amounts owed for Late Charges must be handled consistent with Truth in Lending Act (TILA) regulations.

This application of Partial Payments as a full monthly installment advances the date of the oldest unpaid installment, but not the date on which the account first became Delinquent.

###### (B) Required Documentation

When applying the Partial Payment totaling a full monthly payment, the Mortgagee must:

- report the appropriate [Status Code](#) in the Single Family Default Monitoring System (SFDMS); and
- advance the Oldest Unpaid Installment (OUI) date one month.

##### iii. Return of Partial Payments for Mortgages in Default

###### (A) Standard

If the Mortgage is in Default, the Mortgagee may return the Partial Payment to the Borrower with a letter of explanation only under the following circumstances:

- when the payment represents less than half of the full amount then due;

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- when the payment is less than the amount agreed to in an oral or written Forbearance Plan;
- when the payment is less than the amount stated in an approved Trial Payment Plan (TPP) Agreement;
- when the Property is occupied by a rent-paying tenant and the rents are not being applied to the Mortgage Payments;
- when foreclosure has been started; or
- when it is 14 Days or more after the Mortgagee has mailed the Borrower a statement of the full amount due, including Late Charges, which advises that it intends to refuse to accept future Partial Payments (see [Application of Subsequent Payment to Unpaid Late Charges](#)), and either of the following conditions have occurred:
  - four or more full monthly installments are due but unpaid; or
  - a delinquency of any amount, including Late Charges, has continued for at least six months since the account first became Delinquent.

#### (B) Required Documentation

The Mortgagee must ensure that its servicing file reflects any Partial Payments returned to the Borrower and includes any letters of explanation for the returned payments.

#### f. Lien Status

The Mortgagee must preserve the first lien status of the FHA-insured Mortgage. HUD will not pay a claim on a Mortgage that lacks first priority position.

#### g. Imminent Default

##### i. Definition

A Borrower facing Imminent Default is defined as a Borrower who is current or less than 30 Days past due on their Mortgage Payment and is experiencing a significant, documented reduction in income or some other hardship that will prevent them from making the next required Mortgage Payment during the month that it is due.

##### ii. Standard

The Mortgagee must obtain documentation necessary to verify that the Borrower is experiencing a significant reduction in income or some other hardship that will prevent them from making the next required Mortgage Payment during the month that it is due.

##### iii. Required Documentation

The Mortgagee must include in its servicing file documentation of the basis for the determination that the Borrower's financial condition will result in a Default.

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#### iv. Loss Mitigation Options that are Applicable for Borrowers Facing Imminent Default

Upon reviewing the financials of the Borrower facing Imminent Default, the following Options are to be applied through the normal waterfall process to determine eligibility:

- Informal or Formal Forbearance Agreements;
- FHA-Home Affordable Modification Program (FHA-HAMP);
- Pre-Foreclosure Sale (PFS) Program; and
- Deed-in-Lieu (DIL) of Foreclosure.

#### h. Early Default Intervention

The Mortgagee must determine the Borrower's ability to make monthly Mortgage Payments and take loss mitigation action or commence foreclosure, if loss mitigation is not feasible, within six months of the date of Default, or within such additional time approved by the NSC via EVARS.

The Mortgagee must notify each Borrower, co-signer, and any other party requiring notice by state law that the Mortgage is in Default.

#### i. Delinquent Mortgage Identification

The Mortgagee must identify Delinquent Mortgages and their payment status and provide such information to appropriate servicing and collection staff on a daily basis.

#### ii. SFDMS Default Reporting

##### (A) Definition

Single Family Default Monitoring System (SFDMS) is HUD's system for tracking Mortgagee data on Defaulted Mortgages until a Default is resolved through reinstatement or termination.

##### (B) Standard

The Mortgagee must report the [Delinquency/Default Status Codes](#) that accurately reflect the severity of Default and Mortgagee action taken in SFDMS.

#### (1) Types of Mortgages to Report

Each month, the Mortgagee must report Default servicing activities for all Mortgages that are 30, 60, and 90 Days or more in Default as of the last Day of the month.

The Mortgagee must report the status of three classes of Mortgages each month:

- New Delinquencies: The Mortgagee must report Defaulted accounts when one full installment is due and unpaid (30 Days Delinquent - Status Code

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42) and must continue reporting the applicable Status Code until the Default is resolved.

- Open Delinquencies: The Mortgagee must continue to report a Status Code 42 until a servicing action has been initiated/approved and/or completed, which would warrant a Status Code change.
- Delinquencies Resolved During the Cycle Month: The Mortgagee must report the appropriate Status Code to reflect that the delinquency has been addressed.

#### **(2) Vacancy Reporting**

The Mortgagee must advise HUD when the mortgaged Property becomes vacant by reporting in SFDMS:

- the Occupancy Status Code; and
- the date when the Mortgagee determined that the mortgaged Property became vacant.
  - If the mortgaged Property becomes reoccupied, remove the date.
  - If the mortgaged Property becomes re-vacated, input new date.

#### **(3) Time Frame for Reporting**

For every case for which reporting is required, the Mortgagee must submit delinquency data documenting the status as of the end of the month. While Mortgagees may submit delinquency data throughout the month, the Mortgagee must also submit the delinquency data as of the end of month by the fifth business day of the following month.

##### **(a) Reporting Accuracy**

A Mortgagee must submit an accurate SFDMS report. All the information is important; some is so critical that if data is inaccurate or missing, the report on that Mortgage or even the entire monthly report is automatically rejected by SFDMS.

##### **(b) Quality Control**

A Mortgagee's Quality Control System must ensure that:

- the reporting staff is properly trained;
- servicing and foreclosure staff are aware of reporting requirements and of cases reported; and
- report format and content are checked for errors by trained staff, whether it is prepared manually or by an automated system.

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### (C) SFDMS Codes

#### (1) Delinquency/Default Status Codes

The Mortgagee must report the correct [Delinquency/Default Status \(DDS\) Code](#) reflecting the status of the Mortgage.

The Mortgagee must include applicable status dates when reporting DDS Codes. SFDMS permits the submission of delinquency data throughout the month.

#### (2) Delinquency/Default Reason Codes

The Mortgagee must report the reason for the Delinquency/Default using the [Delinquency/Default Reason \(DDR\) Codes](#). Changes for the Reason For Default may occur during the Default episode, and must be reported accordingly.

### (D) Error Reports and Correction

The Mortgagee may receive Error Reports from two systems:

- EDI, which provides the All Transaction Sets 824 (TS824) Report (see the [Electronic Data Interchange Implementation Guide](#) for additional information); or
- [FHAC](#).

The Mortgagee is responsible for retrieving Error Reports from these systems and submitting necessary corrections by the fifth business day. HUD will not provide additional time to enter corrections.

### (E) Correction of a Previously Reported Status Code

If a Mortgagee reports a Borrower in Default in error (Status Code 42) for the first time in a Default episode, the Mortgagee must contact the NSC at [sfdatarequests@hud.gov](mailto:sfdatarequests@hud.gov) for assistance.

When a Mortgagee discovers that the previous Status Code was reported in error, for any other reason, the Mortgagee must:

- report a Status Code 25, Cancel, to advise HUD that the last Status Code reported was in error and should be preserved as a historical record without affecting the default sequence; and
- report the correct Status Code.

### iii. Collection Communication Timeline

#### (A) Definition

The Collection Communication Timeline sets forth the servicing actions that Mortgagees must take when contacting a Borrower with a Delinquent Mortgage.



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#### (B) Standard

The Mortgagee must perform in a timely manner the servicing actions set forth in the following Collection Communication Timeline.

Day	Mortgagee Action
1	Payment due date; no action required until the Mortgage becomes Delinquent.
10	The Mortgagee must begin attempts to contact Borrowers at risk of Early Payment Default or Re-Default in accordance with the <a href="#">Specialized Collection Techniques for Early Payment Default</a> section.
25	The Mortgagee must begin attempts to contact the Borrower with a Delinquent Mortgage in accordance with the <a href="#">Contact Efforts</a> section.
30	The Mortgagee must <a href="#">report the delinquency to HUD</a> via SFDMS.
32	The Mortgagee must send the following: <ul style="list-style-type: none"><li>• <a href="#">Notice of Homeownership Counseling Availability</a>;</li><li>• <a href="#">Servicemembers Civil Relief Act (SCRA) Disclosure</a> (form <a href="#">HUD-92070</a>);</li><li>• <a href="#">Delinquency Notice Cover Letter</a>; and</li><li>• “Save your Home – Tips to Avoid Foreclosure” pamphlet (form <a href="#">HUD-2008-5-FHA</a>).</li></ul>
45	The Mortgagee should begin analysis to identify appropriate Loss Mitigation Options, if any.  If unable to reach the Borrower(s), the Mortgagee must perform an <a href="#">Occupancy Inspection</a> .
61	The Mortgagee must attempt a <a href="#">face-to-face interview</a> with the Borrower no later than this date, unless exempt under <a href="#">24 CFR § 203.604</a> .
90	The Mortgagee must <a href="#">report the appropriate Default Reason Code</a> for the Default in SFDMS.  The Mortgagee must have evaluated all Loss Mitigation Options to determine whether any are appropriate. The Mortgagee must reevaluate for Loss Mitigation each month thereafter.

#### (C) Required Documentation

The Mortgagee must document in their servicing file all communication efforts to reach the Borrower early in their delinquency.

#### iv. Communication Methods

##### (A) Selecting Best Method of Communication

The Mortgagee must use the method or methods of communication most likely to receive a response from each Borrower and take into account the Borrower’s expressed preference for using certain methods of communication.

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The Mortgagee must effectively communicate with persons with hearing, visual, and other communications-related disabilities and persons with limited English proficiency.

#### **(B) Electronic Methods of Communication**

The Mortgagee may use any acceptable use of electronic communications to supplement telephone contact attempts, but they are not to be solely relied upon in attempting to establish contact with the Borrower. The only acceptable forms of electronic communication are:

- email;
- secure web portals (such as online account management tools accessible by Borrowers); and
- other reliable communication methods through which the Mortgagee has been able to effectively communicate with Borrowers in the past.

The Mortgagee must ensure that their electronic signature technology complies with all requirements of the Electronic Signatures in Global and National Commerce (E-SIGN) Act, 15 U.S.C. 7001 et seq. The Mortgagee must include within the electronic communication the Mortgagee's email address, telephone number, and/or website address.

#### **v. Specialized Collection Techniques for Early Payment Defaults and Re-Defaults**

##### **(A) Definitions**

Early Payment Defaults refer to all Mortgages that become 60 Days Delinquent within the first six payments.

A Re-Default is a mortgage Default occurring within six months after reinstatement or the successful use of a permanent Home Retention Option.

##### **(B) Standard**

For Borrowers at risk of Early Payment Default or Re-Default, the Mortgagee must:

- commence contact by the 10<sup>th</sup> Day after the first missed payment to remind Borrowers of Mortgage Payment time frames;
- make a minimum of two attempts per week to contact the Borrower after the 10<sup>th</sup> Day of delinquency, until:
  - contact is established;
  - the Mortgagee determines that the contact information is inaccurate, or no longer in service; or
  - until the Mortgagee determines through an Occupancy Inspection that the Property is vacant or abandoned; and
- make reasonable efforts to obtain an alternate contact method and/or follow up with the Borrower using other methods of communication until contact is established. The Mortgagee must vary the times and days of the week of

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contact attempts to maximize the likelihood of making contact with the Borrower.

#### **(C) Required Documentation**

The Mortgagee must document in their servicing file all specialized collection efforts to reach the Borrowers at risk of Early Payment Default or Re-Default.

#### **vi. Contact Efforts for Delinquent Borrowers**

##### **(A) Standard**

The Mortgagee must begin attempts to make contact with the Borrower with a Delinquent Mortgage beginning on the 25th Day of delinquency, attempting contact a minimum of two times per week until:

- contact is established:
  - the Mortgagee determines that the contact information is inaccurate, or no longer in service; or
  - until the Mortgagee determines through an Occupancy Inspection that the Property is vacant or abandoned; and
- reasonable efforts are made to obtain an alternate contact method and/or follow up with the Borrower using other methods of communication until contact is established.

The Mortgagee must vary the times and days of the week of contact attempts to maximize the likelihood of making contact with the Borrower. Promptly after establishing contact, the Mortgagee must determine whether the Borrower is occupying the Property, ascertain the reason for the delinquency, and inform the Borrower about the availability of Loss Mitigation Options.

##### **(B) Required Documentation**

The Mortgagee must document in their servicing file all communication efforts to reach a Borrower with a Delinquent Mortgage.

#### **vii. Reporting the Delinquency to HUD**

The Mortgagee must report accounts in Default in HUD's SFDMS using the appropriate [Default Status Code and Default Reason Code](#), and must continue reporting the applicable Status Code until the Default is resolved.

#### **viii. Assigned Loss Mitigation Personnel**

The Mortgagee must designate personnel to respond to the Borrower's inquiries and to assist them with Loss Mitigation Options no later than the 45<sup>th</sup> Day of delinquency.

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The Mortgagee must provide the contact information of their loss mitigation or customer assistance hotline, offering direct phone access to assigned loss mitigation personnel, in the [Delinquency Notice Cover Letter](#).

#### ix. Required Notices to Borrower by 45<sup>th</sup> Day of Delinquency

##### (A) Standard

Beginning on the 32<sup>nd</sup> Day, but no later than the 45<sup>th</sup> Day from the date payment was due, the Mortgagee must send a:

- [Notice of Homeownership Counseling Availability](#); and
- [Servicemembers Civil Relief Act \(SCRA\) Disclosure](#) (form [HUD-92070](#)).

##### (1) Notice of Homeownership Counseling Availability

The Mortgagee must provide a Borrower with a Delinquent Mortgage with a notice describing the availability of housing counseling offered by HUD-approved housing counseling agencies and by the Mortgagee. The Mortgagee may use the model Notification to Homeowners of Availability of Housing Counseling Services or create their own, so long as the Notification:

- informs the Borrower with a Delinquent Mortgage of the availability of housing counseling services provided by HUD-approved housing counseling agencies;
- is provided in accessible formats or languages when such Borrower communications have been requested by persons with disabilities and persons with limited English proficiency;
- provides instructions for locating a HUD-approved housing counseling agency in the Borrower's area and includes the HUD Housing Counseling Agency Locator toll-free telephone number (800) 569-4287, through which Borrowers can obtain a list of housing counseling agencies;
- provides instructions for persons with hearing or speech impairments to access HUD's toll-free number via Text Telephone (TTY) by calling the Federal Information Relay Service at (800) 877-8339;
- provides instructions for using the HOPE NOW toll-free telephone number (888) 995-HOPE (4673); and
- describes housing counseling and the potential benefits of engaging in housing counseling.

If using the model Notification, the Mortgagee must not alter this Notification or use the HUD seal on any other document.

##### (2) Servicemembers Civil Relief Act Disclosure

The Mortgagee must send form [HUD-92070](#) for the required notice of servicemember rights to all Borrowers in Default on a residential Mortgage and

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must include the toll-free [Military OneSource](#) number to call if servicemembers or their dependents require further assistance.

#### **(B) Required Documentation**

The Mortgagee must document in their servicing file the dates on which it sent the Notice of Homeownership Counseling Availability and the SCRA disclosure. The Mortgagee must be able to provide to HUD, upon request, the language in its Notice of Homeownership Counseling Availability.

#### **x. Required Notices to Borrower by 60th Day of Delinquency**

##### **(A) Standard**

Beginning on the 32<sup>nd</sup> Day but no later than the 60<sup>th</sup> Day from the date payment was due, the Mortgagee must send the:

- [Delinquency Notice Cover Letter](#); and
- “Save your Home – Tips to Avoid Foreclosure” pamphlet (form [HUD-2008-5-FHA](#)).

##### **(1) Delinquency Notice Cover Letter**

The Mortgagee must send the “Save Your Home: Tips to Avoid Foreclosure” brochure with a cover letter that includes:

- highly visible information about any availability of language access services offered by the Mortgagee for Borrowers with limited English proficiency (this information must be provided, at a minimum, in Spanish and must include an advisement to seek translation or other language assistance);
- the following information related to the Mortgage:
  - number of late payments;
  - total amount of any Late Charges incurred;
  - the month of each late payment; and
  - the original due date of each late payment;
- the Mortgagee’s mailing address and toll-free telephone numbers for Borrowers needing to contact the Mortgagee’s assigned loss mitigation and/or customer assistance personnel;
- a request for current Borrower financial information necessary for [Loss Mitigation analysis](#);
- toll-free telephone numbers for Borrowers needing to contact the Mortgagee’s loss mitigation and/or customer assistance personnel; and
- the toll-free telephone number for Borrowers seeking information on HUD-approved housing counseling agencies, (800) 569-4287, along with the toll-free Federal Information Relay Service number of (800) 877-8339 for Borrowers who may need a Telecommunication Device for the Deaf (TDD) to call the housing counseling line.

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#### (2) “Save Your Home: Tips to Avoid Foreclosure” Brochure

The brochure (form [HUD-2008-5-FHA](#)) is available in English, Spanish, Chinese, and Vietnamese. Mortgagees may either obtain the brochure by accessing HUD’s [Direct Distribution Center](#) or reproduce electronic versions of the brochure at their own expense.

The Mortgagee may not change the contents of the brochure in any way.

#### (3) Resending Notices

The Mortgagee must resend the cover letter and accompanying “Save your Home: Tips to Avoid Foreclosure” brochure (form [HUD-2008-5-FHA](#)) at 45 Days Delinquent unless a new delinquency occurs less than six months after a prior notice and pamphlet was mailed.

#### (4) Exception for Borrowers in Bankruptcy

The Mortgagee is not required to send the cover letter and “Save Your Home: Tips to Avoid Foreclosure” brochure if the Borrower has filed bankruptcy before becoming 45 Days Delinquent, and, in the opinion of the Mortgagee’s legal counsel, providing the cover letter and brochure would be a violation of the automatic stay.

The Mortgagee must send the cover letter and “Save Your Home: Tips to Avoid Foreclosure” once the automatic stay is lifted.

#### (B) Required Documentation

The Mortgagee must document in their servicing file the dates on which it sent the Delinquency Notice Cover Letter and “Save Your Home: Tips to Avoid Foreclosure” brochure.

The Mortgagee must document a bankruptcy-related exception in the servicing file.

### xi. Occupancy Inspections

#### (A) Definitions

An Occupancy Inspection is a visual inspection of a mortgaged Property by the Mortgagee to determine if the mortgaged Property has become vacant or abandoned and to confirm the identity of any occupants.

An Occupancy Follow-Up is an attempt to communicate with the Borrower via letter, telephone, or other method of communication, other than on-site inspection, to determine occupancy when the Mortgage remains in Default after the initial inspection and the Mortgagee has not determined the Borrower’s occupancy status.

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### **(B) Standard**

If the Mortgagee is unable to reach the Borrower(s) by the 45<sup>th</sup> Day of delinquency, the Mortgagee must perform a visual inspection of the mortgaged Property to determine occupancy status.

#### **(1) Initial Occupancy Inspection**

The Mortgagee must perform the initial Occupancy Inspection no later than the 60<sup>th</sup> Day of delinquency when:

- the Mortgage is in Default;
- a payment has not been received within 45 Days of the due date; and
- efforts to reach the Borrower or occupant have been unsuccessful.

#### **(2) Follow-Up Inspections**

If the Mortgagee is unable to determine the Borrower's occupancy status through the initial Occupancy Inspection, the Mortgagee must perform an Occupancy Follow-Up.

If necessary, the Mortgagee must continue Occupancy Inspections every 25-35 Days from the last inspection until the occupancy status is determined.

#### **(3) Occupancy Inspections during Bankruptcy**

When payments are not submitted as scheduled by a Borrower in bankruptcy, the Mortgagee must contact either the bankruptcy trustee or the Borrower's bankruptcy attorney for information concerning the status of the Borrower, to determine if an Occupancy Inspection is needed.

The Mortgagee must continue to perform exterior-only visual inspections until the Default is cured, the Property is disposed of, or the bankruptcy court has granted approval for the Mortgagee to contact the Borrower or to take any required Property P&P actions.

If the Mortgagee determines that the Property is vacant or abandoned during the period in which the Mortgagee is prohibited from contacting the Borrower, the Mortgagee must note the following in the servicing file:

- the date it made its determination; and
- that contact with the attorney or trustee has been made.

#### **(4) Determination that the Property is Vacant or Abandoned**

If the Mortgagee determines through an Occupancy Inspection that the Property is vacant or abandoned, the Mortgagee must:

- send a letter, via a method providing delivery confirmation, to Borrowers at the property address informing them of the Mortgagee's determination

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that the Property is vacant or abandoned. This letter must include the Mortgagee's contact information;

- commence [Vacant Property Inspections](#); and
- take appropriate [Property P&P](#) actions to secure and maintain the Property.

#### (C) Required Documentation

The Mortgagee must retain in the servicing file:

- the dates and methods of Occupancy Follow-Up and vacancy letters;
- evidence of payment to the inspector;
- copies of all completed inspection reports; and
- any accompanying follow-up documentation for Occupancy Inspections.

For all Occupancy Inspections, the Mortgagee must retain in the inspection report:

- date of the inspection;
- identity of the individual inspector and the inspection company;
- the general condition of the Property;
- any actions taken to protect and preserve the Property;
- photographs with a date and time stamp printed on each and labeled accordingly with a description of the contents of each photograph;
- occupancy status of the Property; and
- answers to the following questions, where applicable:
  - Is the house locked?
  - Is the grass mowed and/or are shrubs trimmed?
  - Is there any apparent damage?
  - Is any exterior glass broken?
  - Are there any apparent roof leaks?
  - Does the house contain Personal Property and/or debris?
  - Are any doors or windows boarded?
  - Is the house winterized?
  - Are there any repairs necessary to adequately preserve and protect the Property?

#### xii. Face-to-Face Interviews

##### (A) Standard

The Mortgagee must have a face-to-face interview with the Borrower or make a reasonable effort to arrange a face-to-face interview no later than the 61<sup>st</sup> Day of delinquency, unless exempt.

##### (1) Face-to Face Meetings Not Required

The Mortgagee is not required to conduct a face-to-face interview if:

- the Borrower does not live in the mortgaged Property;



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- the holding Mortgagee, servicing Mortgagee, or branch office of either is not located within 200 miles of the mortgaged Property (unless the Mortgage is insured under [Section 248](#));
- the Borrower has clearly indicated that they will not cooperate with a face-to-face interview; or
- the Borrower's payment is current due to an agreed-upon repayment plan or Forbearance Plan.

#### **(2) Reasonable Effort in Arranging a Face-to-Face Interview**

The Mortgagee must send to the Borrower via Certificate of Mailing or Certified Mail a letter providing information on:

- the availability of face-to-face interviews; and
- how to schedule the interview.

The Mortgagee must also attempt to contact the Borrower at the mortgaged Property to provide information on the availability of face-to face interviews. The Mortgagee may use a third-party vendor to establish this contact with the Borrower and to schedule the Borrower's face-to-face interview with a Mortgagee representative.

#### **(3) Mortgagee Representative Authority**

The Mortgagee must ensure that the employee representing the Mortgagee at face-to-face interviews has the authority to propose and accept reasonable repayment plans. Where a Mortgagee's representative exceeds their authority by agreeing to a repayment plan at the time of the face-to-face interview, the Mortgagee must still accept the repayment plan agreed to by its representative, without regard as to whether the representative overstepped their authority.

#### **(B) Required Documentation**

The Mortgagee must document in the servicing file:

- the reason the face-to-face meeting is not required, if exempt;
- the dates and methods of its attempts at arranging a face-to-face interview; and
- the date of its face-to-face interview with the Borrower.

### **xiii. Reporting the Reason for Default to HUD**

#### **(A) Standard**

The Mortgagee must ensure that HUD's SFDMS reflects the appropriate Default Reason Code for the Default by the 90<sup>th</sup> Day of delinquency.

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#### **(B) Unable to Contact Borrower**

The Mortgagee must report Delinquency/Default Reason (DDR) Code 31, Unable to Contact Borrower, when the reason for delinquency cannot be ascertained because the Borrower cannot be located or has not responded to the Servicer's communication attempts.

If the Mortgagee reports DDR Code 31 in SFDMS, the Mortgagee must document its efforts to contact the Borrower in the servicing file and must continue to try to determine the reason for Default.

A Mortgagee that establishes contact with the Borrower must report the appropriate reason for Default. If the Mortgagee later loses contact with the Borrower during the Default episode, the Mortgagee must not report DDR Code 31, Unable to Contact Borrower. Mortgagees must instead report the accurate DDR Code, and then may later report DDS Code AP to reflect no further loss mitigation action can be reported due to loss of contact.

If the Mortgagee reports DDR Code 31 in error, the Mortgage must:

- report a Status Code 25, Cancel, to advise HUD that the last Status Code reported was in error and should be preserved as a historical record without having an effect on affecting the default sequence; and
- report the correct Status Code.

#### **xiv. Vacant Property Inspections**

##### **(A) Definitions**

A First-Time Vacant (FTV) Property Inspection is the first inspection performed by the Mortgagee to ascertain the condition of a vacant or abandoned Property.

A Follow-up Vacant Property Inspection is an inspection by the Mortgagee of a Property that is not occupied.

##### **(B) Standard**

The Mortgagee must take reasonable actions to protect the value of the security, including performing the following required inspections for vacant or abandoned Properties.

The Mortgagee is liable for any damage resulting from the Mortgagee's failure to preserve and protect the Property unless the Mortgagee can prove that the damage occurred prior to the date the Property became vacant.

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###### (1) First-Time Vacant Property Inspection

The Mortgagee must perform the FTV Property Inspection as soon as reasonably practicable, but no more than 15 business days following the determination that the Property is vacant and/or abandoned.

The Mortgagee must:

- [secure the Property](#), if possible;
- pressure-test all water supply and upload photographs of the results of the test into P260;
- address all imminent and urgent safety hazards and determine what repairs are required to prevent damage to the property; and
- photograph the primary exterior facades and interior areas of the primary and secondary Structures, including any damage found.

###### (2) Follow-up Vacant Property Inspections

The Mortgagee must perform Follow-up Vacant Property Inspections every 25-35 Days after the FTV Property Inspection until the mortgage Default is cured or until conveyance of the Property to HUD. In areas of high vandalism or where local ordinances require more frequent Follow-up Vacant Property Inspections, Mortgagees may perform Follow-up Vacant Property Inspections more frequently than HUD's 25-35 Day requirement and request reimbursement for these inspection costs.

At each inspection, the Mortgagee must:

- photograph the overall condition of the interior and exterior of the primary and all secondary Structures;
- monitor the security and maintenance of the Property;
- assess and manage damage that requires repair, replacement, or removal; and
- address all emergency repairs.

###### (C) Required Documentation

For all Vacancy Inspections, the Mortgagee must retain in the servicing file:

- evidence of payment to the inspector;
- any police reports and/or letters from a local law enforcement agency evidencing the need for additional protective measures; and
- copies of all completed inspection reports that must include:
  - date of the inspection;
  - identity of the individual inspector and the inspection company;
  - the general condition of the Property;
  - any actions taken to protect and preserve the Property;
  - photographs with a date and time stamp printed on each and labeled accordingly with a description of the contents of each photograph;

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- occupancy status of the Property; and
- answers to the following questions, where applicable:
  - Is the house locked?
  - Is the grass mowed and/or are shrubs trimmed?
  - Is there any apparent damage?
  - Is any exterior glass broken?
  - Are there any apparent roof leaks?
  - Does the house contain Personal Property and/or debris?
  - Are any doors or windows boarded?
  - Is the house winterized?
  - Are there any repairs necessary to adequately preserve and protect the Property?

The Mortgagee must document all Property P&P activities performed on vacant Properties.

#### i. Loss Mitigation Review Process

##### i. Servicemember Status

The Mortgagee must offer eligible servicemember Borrowers mortgage protections under the SCRA and [Servicing FHA-Insured Mortgages for Servicemember-Borrowers](#).

##### ii. Review Requirements

###### (A) 90-Day Review

A Mortgagee is required to complete an evaluation of a Defaulted Mortgage for appropriate Loss Mitigation Options before four monthly installments are due and unpaid. The Mortgagee must:

- contact the Borrower to gather information about their circumstances, intentions, and financial condition; and
- attempt to complete the evaluation of the Mortgage for all appropriate Loss Mitigation Options.

After review of a Borrower's loss mitigation request, the Mortgagee must send a written [Notice to Borrower](#) with the determination of eligibility.

###### (B) Monthly Review

The Mortgagee must evaluate monthly all Loss Mitigation Options available for Borrowers in Default, while the Mortgage remains Delinquent.

###### (C) Required Documentation

The Mortgagee must document in the Claim Review File efforts to reach each Borrower in Default in advance of the 90-Day Review deadline.

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The Mortgagee must include monthly notations in the servicing record, documenting the Mortgagee's analysis of each Loss Mitigation Option. If the Borrower indicates there has been no change in their circumstances, the Mortgagee must note this in the servicing record.

If the Borrower is performing on an approved Loss Mitigation Option, including Trial Payment Plans (TPP), the Mortgagee must note this in the Claim Review File.

#### iii. Complete Loss Mitigation Requests

##### (A) Definition

A Complete Loss Mitigation Request is a request for loss mitigation assistance that contains all information the Mortgagee requires from the Borrower in order to evaluate all Loss Mitigation Options including Home Retention Options and Home Disposition Options.

##### (B) Standard

The Mortgagee must timely evaluate and respond to Complete Loss Mitigation Requests. For loss mitigation requests received after the initiation of foreclosure, the Mortgagee must evaluate and respond to Complete Loss Mitigation Requests according to the time frame requirements in [Loss Mitigation during the Foreclosure Process](#).

When a Mortgagee receives incomplete loss mitigation requests, the Mortgagee must notify the Borrower in writing:

- which documents are needed for review; and
- the date the documents should be sent back to the Mortgagee. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

This notice must include the required statement that the Borrower should consider contacting Mortgagees of any other Mortgages secured by the same Property to discuss available Loss Mitigation Options.

##### (C) Required Documentation

The Mortgagee must report the appropriate [Delinquency/Default Status Code](#) in SFDMS and note in the servicing file:

- the date a Complete Loss Mitigation Request was received;
- the date any notices were sent to the Borrower requesting additional documentation, if applicable; and
- a list of additional documentation that was requested, if applicable.

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#### iv. Evaluation of the Borrower's Financial Condition

##### (A) Definitions

For the purposes of Loss Mitigation, the following definitions apply:

Borrower refers to the original Borrower who signs the Note and their heirs, executors, administrators, assigns, and approved Substitute Borrowers. This includes any Borrower who is occupying or not occupying the Property.

Continuous Effective Income is income received by the Borrower that is reasonably likely to continue from the date of the Mortgagee's loss mitigation evaluation through at least the next 12 months.

Hardship for purposes of FHA's Loss Mitigation Options is demonstrated by a verified increase in living expenses or a loss of income. FHA-approved Mortgagees have the delegated authority to request the documentation they deem necessary from Borrowers to substantiate a hardship.

##### (B) Standard

The Mortgagee must ensure that the Loss Mitigation Option reflects the Borrower's ability to pay. The Mortgagee must obtain detailed financial information from the Borrower in order to evaluate them for Loss Mitigation Options. The Mortgagee must:

- validate any financial information received during a telephone interview with appropriate supporting documentation; and
- determine there is no deliberate manufacturing or misrepresentation of the Borrower's financial information or other qualifying status. Deliberate manufacturing or misrepresentation of financial information or qualifying status by the Borrower will disqualify the Borrower from participation.

For purposes of calculating continuous Effective Income in a loss mitigation analysis, the Mortgagee must document each Borrower's income and employment history, verify the accuracy of the amounts of income being reported, and determine if the income can be considered as Effective Income in accordance with the documentation requirements listed in [Income Requirements \(Manual\)](#). The Mortgagee must include any Borrower who is occupying or not occupying the Property; and the income of each owner-occupant non-Borrower who will be added as a Borrower and assume personal liability for repayment of the Mortgage in accordance with the agreed upon loss mitigation terms.

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### (C) Required Documentation

#### (1) Documentation for Hardship

The Mortgagee may use Fannie Mae Form 710/Freddie Mac Form 710, *Mortgage Assistance Application*, or similar document, to collect information related to the Borrower's hardship.

The Mortgagee must retain documentation in the servicing file that verifies the Hardship and report the appropriate Delinquency/Default Status Code in SFDMS.

#### (2) Borrower Income and Assets

Prior to approving a Borrower for a Loss Mitigation Option, the Mortgagee must obtain the following documentation:

- a credit report for all Borrowers;
- the two most recent monthly bank statement(s);
- the two most recent months of brokerage statement(s) if applicable;
- for self-employed Borrowers, the most recent federal tax return and quarterly or year-to-date profit and loss statement at the time the Borrower requests Loss Mitigation; and
- at least one of the following:
  - at least two of the Borrower's most recent pay stubs;
  - the Borrower's Social Security Income statements and/or disability payment statements, if applicable; or
  - the Borrower's most recent Form W-2 or Form 1099.

#### v. Loss Mitigation Reporting

The Mortgagee must report the [Delinquency Workouts Status Codes](#) that accurately reflect the stage of loss mitigation review in SFDMS.

If the Mortgagee has determined that the Borrower is ineligible for Loss Mitigation and the Mortgagee will be initiating foreclosure, the Mortgagee must report the appropriate Ineligible for Loss Mitigation Code in SFDMS.

#### vi. Notice to Borrower after Loss Mitigation Review

The Mortgagee must send a written notice to the Borrower after an evaluation of the Borrower for Loss Mitigation Option eligibility, which indicates:

- the Mortgagee's determination of the Borrower's eligibility for a Loss Mitigation Option and which Loss Mitigation Option, if any, the Mortgagee will offer to the Borrower;
- the amount of time in which the Borrower must accept or reject an offer of a Loss Mitigation Option;



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- the actual reason or reasons they have been denied for any HUD Loss Mitigation Option;
- the process for appeals or escalation of cases;
- the process and time frame for submission of additional information that may impact the Mortgagee's evaluation;
- the Mortgagee's points of contact; and
- if loss mitigation is denied after submission of a Complete Loss Mitigation Request and expiration of any applicable appeal period, rejected by the Borrower, unsuccessful, or unable to be considered due to the Borrower's failure to submit a Complete Loss Mitigation Request after the Mortgagee's request for additional information:
  - the Borrower's Mortgage may be included in a Single Family Loan Sale or
  - the Borrower's Mortgage may be foreclosed upon.

#### vii. Loss Mitigation Agreements

##### (A) Standard

The Mortgagee must ensure that Loss Mitigation Option Agreements are executed by all parties necessary to ensure:

- that HUD's first lien position is preserved; and
- that the Agreement is enforceable under state and local law.

##### (B) Mortgagee Signature

Where a Mortgagee signature is required on a Loss Mitigation Option Agreement, the servicing Mortgagee with this delegated authority may provide this signature.

##### (C) Authorized Third Parties

When a Loss Mitigation Option Agreement is to be signed by an Authorized Third Party with authority to act on behalf of the Borrower, the Mortgagee must ensure that the Claim Review File includes a copy of that party's [authorization](#).

##### (D) Electronic Signatures

The use of electronic signatures is voluntary. HUD will accept an electronic signature conducted in accordance with the [Policy on Use of Electronic Signatures](#) on HUD Loss Mitigation documents requiring signatures, unless otherwise prohibited by law.

##### (E) No Waiver of Rights

The Mortgagee must not include any language in any loss mitigation documents that requires Borrowers to waive their rights under state or federal law or under the mortgage contract as a condition for consideration, approval, or implementation of a Loss Mitigation Option.



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#### viii. Loss Mitigation during Bankruptcy Proceedings

##### (A) Standard

The Mortgagee must comply with and seek relief, if appropriate, from the automatic stay. The Mortgagee may review Borrowers with active Chapter 7 or Chapter 13 bankruptcy cases for Loss Mitigation Options to the extent that such loss mitigation does not violate federal bankruptcy laws or orders of the bankruptcy court or bankruptcy trustee.

##### (1) Eligibility for Loss Mitigation

The Mortgagee may consider Loss Mitigation Options for those Borrowers who have received a Chapter 7 bankruptcy discharge and did not reaffirm the FHA-insured mortgage debt under applicable law.

##### (2) Bankruptcy Proceedings for which Borrower has an Attorney

The Mortgagee must, upon receipt of notice of a bankruptcy filing, send information to the Borrower's attorney indicating that Loss Mitigation Options may be available, and provide:

- requirements for additional financial information documentation;
- applicable time frames;
- Mortgagee contact information; and
- additional instructions to facilitate workout discussions, as appropriate.

The Mortgagee must ensure that this communication does not infer that it is in any way an attempt to collect a debt.

##### (3) Bankruptcy Proceedings for which Borrower does not have an Attorney (Bankruptcy Pro Se)

Where the Borrower filed the bankruptcy pro se, the Mortgagee must send information indicating that Loss Mitigation Options may be available to the Borrower, with a copy to the bankruptcy trustee.

The Mortgagee must ensure that this communication does not infer that it is in any way an attempt to collect a debt.

##### (B) Required Documentation

The Mortgagee must retain documentation supporting efforts to comply with or seek relief from automatic stays and documentation supporting any delays in meeting required HUD timelines in the Claim Review File.

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#### (C) Reporting Bankruptcy

The Mortgagee must report in SFDMS the Account in Bankruptcy Codes reflecting the status of the bankruptcy proceedings.

#### ix. Escalated Cases

##### (A) Definition

Escalated Cases are Borrower inquiries and complaints requiring additional Mortgagee review because they include allegations of:

- improper analysis of Borrower information or denials of Loss Mitigation Options;
- foreclosures initiated or continued in violation of HUD's policy; or
- other violation of HUD Collections and Loss Mitigation policies.

##### (B) Standard

The Mortgagee must escalate cases to its designated escalation team at the request of:

- HUD staff; or
- the Borrower or Borrower's Authorized Third Party representative.

##### (C) Escalation Processes

The Mortgagee must escalate and respond to cases in accordance with their written internal policies.

The Mortgagee must ensure that, at a minimum, the policies include the following:

- which staff members will be responsible for resolving escalated cases. These staff members must:
  - not be the same staff members responsible for the first evaluation of the loss mitigation application; and
  - have access to the Borrowers' servicing files;
- provide for timely responses to escalated cases as follows:
  - within seven Days of categorizing a Borrower's inquiry or complaint as an escalated case, the Mortgagee should notify the Borrower in writing that their inquiry and/or complaint has been escalated and that a resolution to their case will be provided no later than 30 Days from the date of escalation; and
  - if the Mortgagee is unable to resolve an escalated case within 30 Days, the Mortgagee must send the Borrower written updates on the status of their case every 15 Days until the case is resolved;
- provide Borrowers with the direct contact information of the department and/or staff member responsible for resolving its escalated cases;

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- include methodologies for assessing a Servicer's compliance with its escalation policies. These methodologies must be included in a Mortgagee's QC Plan; and
- detail the Mortgagee's process for resolving escalated cases and managing foreclosure activity when a foreclosure sale has been scheduled.

#### j. HUD's Loss Mitigation Program

##### i. Definitions

A Loss Mitigation Option is one of the following strategies under FHA's Loss Mitigation Program requirements intended to minimize economic impact to the MMIF and to avoid foreclosure, if possible:

- Special Forbearance (SFB)-Unemployment
- FHA-Home Affordable Modification Program (FHA-HAMP) Loan Modification, Partial Claim, and Combination Loan Modification/Partial Claim
- Pre-Foreclosure Sale (PFS)
- Deed-in-Lieu (DIL) of Foreclosure

##### ii. Standard

Mortgagees are required to evaluate all Defaulted Mortgages for Loss Mitigation Options for those Borrowers who are in Default or in Imminent Default.

In implementing HUD's Loss Mitigation Program, the Mortgagee must:

- consider all reasonable means to address delinquency at the earliest possible time;
- adhere to the requirements for communication with Borrowers in Default as set out in the [Collection Communication Timeline](#);
- utilize HUD's Loss Mitigation Options to avoid foreclosure, when feasible;
- [initiate foreclosure](#) within six months of the Date of Default; and
- re-evaluate each Delinquent Mortgage monthly for loss mitigation eligibility until reinstatement or completion of a Home Disposition Option, foreclosure, or Single Family Loan Sale (SFLS).

When reviewing Borrowers for Loss Mitigation Options, a streamlined or refinanced Mortgage on the same Property and by the same Borrowers is not considered a new Mortgage for seasoning requirements.

The Mortgagee may offer eligible Borrowers Loss Mitigation Options in accordance with program-specific procedures for:

- Section 203(q) Mortgages, Mortgages on Property in Allegany Reservation of Seneca Indians;
- [Section 248 Mortgages](#) on Indian Land insured pursuant to Section 248 of the National Housing Act; and
- [Section 247 Mortgages](#), Mortgages on Hawaiian Home Lands insured pursuant to Section 247 of the National Housing Act.

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#### (A) Owner Occupancy

##### (1) Definitions

An Owner-Occupant Borrower is a Borrower residing in the Property secured by the FHA-insured Mortgage as a Principal Residence.

A Non-Occupant Borrower is a Borrower on a Mortgage securing a Property that is not occupied by any Borrower.

##### (2) Standard for Non-Occupant Borrowers

The Mortgagee must consider Non-Occupant Borrowers for:

- Informal or Formal Forbearances; or
- Home Disposition Options.

##### (3) Required Documentation

The Mortgagee must document in the [Claim Review File](#) the justification for approval of any Non-Occupant Borrowers for Loss Mitigation Options and, if applicable, retain a copy of the Request for Variance received from the NSC via EVARS. Mortgagees must also report the appropriate [Delinquency/Default Status Code](#) in SFDMS.

##### (4) Exceptions to Owner Occupancy Requirements

##### (a) Borrowers with Multiple FHA-Insured Mortgages

###### (i) Standard

The Mortgagee may consider Loss Mitigation Options [other than the Deed-in-Lieu \(DIL\) Option](#) for those Borrowers who meet the eligibility requirements for policy exceptions listed in the [Exceptions to the FHA Policy Limiting the Number of Mortgages per Borrower](#) section.

###### (ii) Required Documentation

The Mortgagee must document in the Claim Review File the justification for any exceptions for Borrowers with multiple FHA-insured Mortgages.

##### (b) Non-Borrowers who Acquired Title through an Exempted Transfer

The Mortgagee may consider for Home Retention Options a non-borrower who acquires title to a Property securing an FHA-insured Mortgage if the mortgage is not due and payable pursuant to the [Garn-St. Germain Depository Institutions Act](#), and that the non-borrower:

- will occupy the home as a Principal Residence;

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- submits to a credit review;
- meets financial criteria for loss mitigation assistance; and
- is willing to [assume personal liability](#) for repayment of the Mortgage in accordance with the agreed loss mitigation terms.

##### **(c) Non-Borrowers who Acquired Title not through an Exempted Transfer**

The Mortgagee may consider for loss mitigation a non-borrower who is not covered by an exempted transfer under the [Garn-St. Germain Depository Institutions Act](#) and who acquired title but does not hold sole title to the Property as follows:

- the non-borrower will be added as a Borrower; and
- the non-borrower will be considered for loss mitigation with the cooperation and approval of the existing Borrowers.

##### **(d) Co-Insured Mortgages**

The Mortgagee must not offer any Loss Mitigation Option other than the Informal or Formal Forbearance or SFB-Unemployment Options on co-insured Mortgages until the 60<sup>th</sup> payment has been received.

#### **(B) Eligibility to Participate in HUD Programs**

##### **(1) Standard**

The Mortgagee must verify that the Borrowers are eligible to participate in HUD's Loss Mitigation Program. As a part of determining eligibility, the Mortgagee must utilize the appropriate system to determine if the Borrower is excluded from HUD's Loss Mitigation Program.

To be eligible to participate in HUD's Loss Mitigation Program, the Borrower:

- may not own other real estate subject to FHA insurance, except within the stated [exceptions](#);
- has not been the Borrower, except through inheritance or as a co-signer only, on prior loans on which an FHA claim has been paid within the past three years; and
- for purposes of FHA-HAMP:
  - may not be debarred, suspended or subject to a HUD Limited Denial of Participation (LDP) as determined in accordance with [Excluded Parties](#) requirements; and
  - may not have unresolved delinquent Federal Debt as determined in accordance with [Borrower Ineligibility Due to Delinquent Federal Non-Tax Debt](#) requirements. The Delinquent FHA-insured Mortgage associated with the Loss Mitigation does not constitute a disqualifying delinquent Federal Debt.

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The Credit Alert Verification Reporting System (CAIVRS) must be used when determining the Borrower's eligibility for the following Loss Mitigation Options:

- SFB
- FHA-HAMP
- PFS Program
- DIL of Foreclosure

#### (2) Required Documentation

The Mortgagee must retain in its Claim Review File documentation evidencing that the Borrower is eligible to participate in an FHA transaction.

#### iii. HUD's Loss Mitigation Option Priority Waterfall

The Mortgagee must evaluate Borrowers using the Loss Mitigation Option Priority Waterfall below to determine which, if any, Loss Mitigation Options are appropriate in accordance with HUD guidance.

The Mortgagee must not condition the use of a Loss Mitigation Option on the receipt of a Borrower's cash contribution or Borrower's payment of [fees or charges](#).

Loss Mitigation Waterfall Options			
Question	Decision Point	Yes	No
1	Is the Borrower an Owner-Occupant?	Question 2	Informal or Formal Forbearance or Question 9
2	Has the Borrower experienced a verified loss of income or increase in living expenses?	Question 3	Informal or Formal Forbearance or Foreclosure
3	Is one or more Borrowers receiving continuous <a href="#">Effective Income</a> ?	Question 4	<a href="#">Special Forbearance – Unemployment</a>
4	Can a Mortgage Payment at or below the target monthly Mortgage Payment be achieved by re-amortizing the total outstanding debt for 360 months at the Market Rate?	<a href="#">FHA-HAMP Standalone Loan Modification</a>	Question 5

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Loss Mitigation Waterfall Options			
Question	Decision Point	Yes	No
5	Is the Borrower's current interest rate at or below Market Rate, and is the current Mortgage Payment with re-analyzed escrow at or below the target payment?	<a href="#">FHA-HAMP Standalone Partial Claim</a>	Question 6
6	Can the FHA-HAMP Combination Loan Modification and Partial Claim bring the loan current with a Mortgage Payment at or below 40% of current income?	<a href="#">FHA-HAMP Combination Loan Modification and Partial Claim</a>	Question 7
7	Is the FHA-HAMP Combination Loan Modification and Partial Claim Mortgage Payment at or greater than 40% of current income, <u>and</u> one or more Borrowers is unemployed?	<a href="#">Special Forbearance – Unemployment</a>	Question 8
8	Has the Borrower been determined ineligible for all <a href="#">Home Retention Options</a> , but has surplus income or other assets to repay the indebtedness?	<a href="#">Formal Forbearance</a> not to exceed six months	Question 9
9	Does the Borrower meet the requirements to participate in a <a href="#">Pre-Foreclosure Sale (PFS)</a> ?	<a href="#">Streamlined</a> or <a href="#">Standard PFS</a>	Question 10
10	Does the total outstanding debt remain uncurable and was an attempt made to market the Property under the PFS Program?	<a href="#">Streamlined</a> or <a href="#">Standard Deed-in-Lieu</a>	Foreclosure

#### iv. Required Documentation

The Mortgagee must document its implementation of HUD's Loss Mitigation Program by:

- reporting loss mitigation actions through SFDMS;
- documenting in the Claim Review File all loss mitigation actions, including all efforts to contact the Borrowers; and
- retaining all documentation used to analyze and make loss mitigation determinations and to confirm compliance with loss mitigation requirements.

#### k. Home Retention Options

##### i. Definition

Home Retention Options are the Loss Mitigation Options of Informal and Formal Forbearances, SFB-Unemployment and FHA-HAMP.

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#### ii. HUD Postponement of Principal Payments for Servicemembers

##### (A) Standard

The Mortgagee may, by written agreement with the Borrower, postpone for the period of military service and three months thereafter any part of the monthly Mortgage that represents amortization of principal.

The Mortgagee must include in the agreement 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.

##### (B) Required Documentation

The Mortgagee must retain in the servicing file a copy of the written agreement postponing principal payments.

#### iii. Forbearance Plans

##### (A) Definitions

Forbearance Plans refer to arrangements between a Mortgagee and Borrower that may allow for a period of reduced or suspended payments and may provide specific terms for repayment.

Informal Forbearance Plans refer to oral agreements allowing for reduced or suspended payments for a period of three months or less and may provide specific terms for repayment.

Formal Forbearance Plans are written agreements allowing for reduced or suspended payments for a period greater than three months, but not more than six months, unless otherwise authorized by HUD, and such plans may include specific terms for repayment.

##### (B) Standard

The Mortgagee may offer an Informal or Formal Forbearance Plan to a Borrower with a Delinquent Mortgage when the Borrower:

- is a Non-Occupant Borrower;
- does not have a loss of income or increase in living expenses that can be verified;
- is under review for permanent Loss Mitigation Options; or
- is ineligible for all Home Retention Options but has surplus income or other assets to repay the indebtedness.



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1 In order to proceed with a Formal Forbearance Plan, the Mortgagee must receive a  
2 signed Formal Forbearance Plan from the Borrower and file it in the Claim Review  
3 File.

4 Informal and Formal Forbearances are not eligible for loss mitigation incentive  
5 payments.

#### 6 **(C) Forbearance Reporting**

7 The Mortgagee must report the appropriate [Delinquency/Default Status \(DDS\) Code](#)  
8 [in SFDMS](#) reflecting the use of Informal and Formal Forbearance.

9 For Formal Forbearance Plans that extend past the deadline to initiate foreclosure, the  
10 Mortgagee must submit a request for an extension of time in EVARS for approval  
11 prior to the expiration of the First Legal Deadline (FLD). The request must include a  
12 statement that the Borrower qualified for the Formal Forbearance Plan under HUD's  
13 Loss Mitigation Home Retention Option Priority guidance.

#### 14 **iv. Special Forbearance – Unemployment**

##### 15 **(A) Definition**

16 The SFB-Unemployment Option is a Home Retention Option available when one or  
17 more of the Borrowers has become unemployed and this loss of employment has  
18 negatively affected the Borrower's ability to continue to make their monthly  
19 Mortgage Payment.

##### 20 **(B) Eligibility**

#### 21 **(1) Defaulted Mortgage Status**

22 The Mortgage must meet the following conditions at the time the SFB-  
23 Unemployment Agreement is executed:

- 24 • be at least three months past due (61 Days Delinquent), but not more than  
25 12 months due and unpaid; and
- 26 • not be in foreclosure, or foreclosure action has been suspended or  
27 canceled, when the SFB-Unemployment Agreement is executed.

#### 28 **(2) Borrower Qualifications**

##### 29 **(a) Standard**

30 The Mortgagee must ensure that the Borrower meets the following eligibility  
31 requirements for an SFB-Unemployment Option:

- 32 • The Borrower has recently experienced a verified loss of income or  
33 increase in living expenses due to loss of employment.

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- The Borrower must be an Owner-Occupant Borrower and will occupy the Property as a Principal Residence during the term of the SFB-Unemployment Agreement, unless an exception is granted.
- A Borrower has a verified unemployment status and:
  - no Borrower is currently receiving continuous [Effective Income](#); or
  - an analysis of Borrower financial information under the Home Retention Priority Waterfall indicates that the SFB-Unemployment Option is the only option available for the Borrower.

#### **(b) Exception to Owner-Occupant Requirement for Sale or Assumption**

The Mortgagee may offer an SFB-Unemployment Option to an unemployed Borrower when the Mortgagee has knowledge that the mortgaged Property is for sale or an assumption of the Property is in process.

#### **(3) Property Condition**

The Mortgagee must conduct any review it deems necessary, including a property inspection, when the Mortgagee has reason to believe that the physical conditions of the Property adversely impact the Borrower's use or ability to support the debt as follows:

- financial information provided by the Borrower shows large expenses for property maintenance;
- the Mortgagee receives notice from local government or other third parties regarding property condition; or
- the Property may be affected by a disaster event in the area.

If significant maintenance costs contributed to the Default or are affecting the Borrower's ability to make payments under the Mortgage or SFB-Unemployment Agreement, the Mortgagee may provide in the SFB-Unemployment Agreement a period of mortgage forbearance during which repairs specified in the agreement will be completed at the Borrower's expense.

#### **(C) Special Forbearance – Unemployment Agreement**

##### **(1) Definition**

The Special Forbearance-Unemployment Agreement is a written agreement between a Mortgagee and the Borrowers, one or more of whom has become unemployed, allowing for reduced and/or suspended Mortgage Payments.

##### **(2) Standard**

The Mortgagee must prepare a Special Forbearance-Unemployment Agreement that provides for the following:

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- identifies the specific months for which the account is Delinquent and notes the total arrearage that accrued prior to the beginning of the Agreement;
- suspends and/or reduces the current monthly Mortgage Payment;
- ensures that the forbearance payment installments required under the terms of the Agreement are based on the Borrower's [ability to pay](#);
- disallows late fees to be assessed while the Borrower is performing under the terms of the Special Forbearance-Unemployment Agreement;
- indicates that if the Borrower's financial circumstances change, the Mortgagee may adjust the monthly payment based on an evaluation of the Borrower's new financial information;
- disallows the accrued arrearage to exceed the equivalent of 12 months Delinquent Principal, Interest, Taxes, and Insurance (PITI) (the 12 months of PITI for Adjustable Rate Mortgages (ARM), Graduated Payment Mortgages (GPM), and Growing Equity Mortgages (GEM) will be calculated by multiplying 12 times the monthly payments due on the date of Default);
- specifies the date that the Special Forbearance-Unemployment Agreement will expire if it is not earlier revised or terminated because of a change in the Borrower's financial circumstances; and
- permits the Borrower to pre-pay the mortgage delinquency at any time.

The SFB-Unemployment Agreement will not include terms for reinstatement because the Mortgagee must re-evaluate the Borrower for more permanent Loss Mitigation Options to cure a Default once the Borrower is gainfully employed and/or the SFB-Unemployment Agreement expires.

#### (3) Required Documentation

The Mortgagee must retain in the Claim Review File:

- evidence that the Mortgagee analyzed the Borrower's financial condition;
- evidence that the SFB-Unemployment Agreement is supported by the financial analysis; and
- a copy of the SFB-Unemployment Agreement executed by at least one Borrower and by an authorized agent of the Mortgagee.

#### (4) Effective Date

The Executed SFB-Unemployment Agreement date is the date the Mortgagee executes the SFB-Unemployment Agreement.

The SFB-Unemployment Agreement is considered "executed" when:

- at least one of the Borrowers has signed and dated the Agreement;
- the Agreement has been returned to the Mortgagee; and
- the authorized Mortgagee representative has signed and dated the Agreement as well.

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#### **(5) Cancellation or Suspension of Foreclosure**

##### **(a) Standard**

If state law requires the Mortgagee to cancel a foreclosure action and then requires the Mortgagee to re-initiate the action at a later date, if needed, the Mortgagee must request an approval from the NSC via EVARS for an extension of time to the First Legal Deadline prior to approving the Borrower for SFB-Unemployment Agreement.

##### **(b) Required Documentation**

The Mortgagee must include in the Claim Review File the NSC approval to cancel the action for an SFB-Unemployment Option after foreclosure was initiated.

#### **(6) Review of SFB-Unemployment Agreements**

##### **(a) Standard**

The Mortgagee must review the Borrower's continued eligibility for SFB-Unemployment on a monthly basis and must adjust the terms of the Agreement if there is a change in financial circumstances.

##### **(b) Required Documentation**

The Mortgagee must clearly document in the Claim Review File the Borrower's compliance with the terms of the Agreement and any adjustment of terms due to changes in financial circumstances.

#### **(7) Re-Evaluation of the SFB-Unemployment Agreement**

The Mortgagee must review the Borrower's continued eligibility for SFB-Unemployment or eligibility for other Loss Mitigation Options if the Borrower presents evidence that their financial circumstances have changed. The Mortgagee must ensure that the re-evaluated SFB-Unemployment Agreement will not allow for the Mortgage to become more than 12 months of Delinquent PITI.

#### **(D) Payment Application**

The Mortgagee may reduce, suspend, or both, the required monthly Mortgage Payment for the time period of the SFB-Unemployment Agreement.

The Mortgagee must place payments submitted by the Borrower during the SFB-Unemployment period in a suspense or memo fund account which is to be identified as belonging to the Borrower. When the suspense funds total a full monthly payment, the Mortgagee must apply the payment to the Borrower's account in accordance with

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HUD's [Partial Payments for Mortgages in Default](#) guidance and any other applicable requirements.

If the Borrower does not complete the SFB-Unemployment Agreement, all funds held in suspense will be applied to the Borrower's account.

#### **(E) Foreclosure-Related Fees and Costs**

The Mortgagee may address foreclosure-related fees and costs due to a foreclosure cancellation/suspension through the qualification of a permanent Loss Mitigation Option or at the expiration of the SFB-Unemployment Agreement.

The Mortgagee must not require the Borrower to pay more than the foreclosure-related fees and costs HUD has identified as customary and reasonable. See the [Allowable Foreclosure and Bankruptcy Attorney Fees](#) to determine HUD's maximum fee amount that may be reimbursed.

#### **(F) Expiration of SFB-Unemployment Agreement**

##### **(1) Re-evaluation of Borrower**

During the month in which the SFB-Unemployment Agreement is to expire, the Mortgagee must evaluate the Borrower to determine if the Borrower qualifies for:

- an additional period of forbearance beyond the initial expiration, but not allowing for more than 12 months of Delinquent PITI, due to continued unemployment; or
- a permanent Loss Mitigation Option.

##### **(2) Notification to Borrower**

The Mortgagee must notify the Borrower, in writing, the results of the review, including the following information:

- whether or not they qualify for a Loss Mitigation Option;
- the reason for denial; and
- allowing the Borrower a minimum of seven Days to submit additional information that may impact the Mortgagee's evaluation.

#### **(G) Option Failure**

An SFB-Unemployment Option is considered failed if the Borrower:

- abandons the Property;
- informs the Mortgagee that the terms of the SFB-Unemployment Agreement will not be fulfilled; or
- fails to perform under the terms of the SFB-Unemployment Agreement for 60 Days, without any advisement to the Mortgagee of any problems that prevented the Borrower from complying with the Agreement's terms.

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If the SFB-Unemployment Option fails, the Mortgagee must complete another Loss Mitigation Option or initiate foreclosure. HUD provides an automatic 90-Day extension during which the Mortgagee must take one of these actions.

#### **(H) Special Forbearance Incentive**

The Mortgagee may claim an [incentive](#) for an SFB-Unemployment Agreement. HUD must receive a correct and complete claim submission within 60 Days of the execution date of the SFB-Unemployment Agreement or the incentive claim will not be processed. The Mortgagee may not file more than one SFB-Unemployment incentive claim per Default due to the Borrower's unemployment.

#### **(I) Reporting of SFB-Unemployment**

The Mortgagee must report the use of an SFB-Unemployment Option in SFDMS.

### **v. FHA-HAMP**

#### **(A) Definition**

The FHA-HAMP Option is a Loss Mitigation Option using one of the following to allow the Mortgage to be reinstated by establishing an affordable monthly payment:

- Standalone Loan Modification
- Standalone Partial Claim
- Combination Loan Modification and Partial Claim

A Loan Modification is a permanent change to one or more terms of a Borrower's Mortgage.

A Partial Claim is FHA's reimbursement of a Mortgagee advancement of funds on behalf of the Borrower in an amount necessary to assist in reinstating the Delinquent Mortgage under the FHA-HAMP Option.

#### **(B) Eligibility**

##### **(1) Mortgage Status**

The Mortgage must be in Default or Imminent Default. The Mortgagee must ensure that the Mortgage meets the following eligibility criteria for an FHA-HAMP:

- default is due to a verified loss of income or increase in living expenses;
- a minimum of four Mortgage Payments have been paid on time by the Borrower on the existing Mortgage;
- the Mortgage must not be in foreclosure at the time the permanent FHA-HAMP documents are executed; and
- three or more full monthly payments are due and unpaid (i.e., 61 Days or more past due) when the FHA-HAMP documents are executed.

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If the Mortgage is an FHA Streamline Refinance, the Mortgagee may use previous payment history on the prior FHA-insured Mortgage to determine if the Borrower has met the minimum requirement of four Mortgage Payments paid on time on the existing Mortgage. A Streamline Refinance or change in FHA case numbers will not reset the 30 percent maximum Partial Claim statutory limit.

For those Borrowers facing Imminent Default under FHA-HAMP, the Mortgagee must also ensure that the following conditions are met:

- Imminent Default is due to a verified loss of income or other hardship as explained in the definition of [Imminent Default](#); and
- the Mortgagee obtains documentation evidencing the cause of the Imminent Default.

#### **(2) Borrower Qualifications [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options]**

The Mortgagee must ensure that the Borrower meets the following eligibility criteria for the FHA-HAMP Option:

- The Borrower must be an Owner-Occupant Borrower who is occupying the Property as a Principal Residence.
- The Borrower has not executed an FHA-HAMP agreement in the past 24 months, unless the FHA-HAMP agreement was executed as part of a Disaster Loss Mitigation made available to the Borrower in a [Presidentially-Declared Major Disaster Area](#) (PMDMA).
- The Borrower has recently experienced a verified loss of income or increase in living expenses.
- One or more Borrowers receives continuous [Effective Income](#).
- The Mortgagee determines an affordable monthly payment can be achieved using the [FHA-HAMP Option calculations](#).
- The Borrower has successfully completed a TPP based on the FHA-HAMP monthly Mortgage Payment amount.

FHA-HAMP may not be used to reinstate a Mortgage prior to sale or assumption.

#### **(3) Property Condition**

The Mortgagee must conduct any review it deems necessary, including a property inspection, when the Mortgagee has reason to believe that the physical conditions of the Property adversely impact the Borrower's use or ability to support the debt as follows:

- financial information provided by the Borrower shows large expenses for property maintenance;
- the Mortgagee receives notice from local government or other third parties regarding property condition; or
- the Property may be affected by a disaster event in the area.



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### (C) FHA-HAMP Options

The use of an FHA-HAMP Option is to alleviate the Borrower's burden of immediate repayment of arrears and to adjust monthly payments to a level sustainable by the household's current income. The FHA-HAMP Option may *or* may not include a Partial Claim.

The Mortgagee must use the [FHA-HAMP Calculations](#) to determine which, if any, FHA-HAMP Option is most appropriate. See [FHA-HAMP Loan Modification Provisions](#) for interest rate and principal balance requirements for FHA-HAMP Loan Modifications, and [FHA-HAMP Partial Claim Provisions](#).

#### (1) FHA-HAMP Standalone Loan Modification

The Mortgagee must offer an FHA-HAMP Standalone Loan Modification if the Mortgagee can achieve an affordable Mortgage Payment at or below the target monthly Mortgage Payment:

- by re-amortizing the total outstanding debt for 360 months at the [Market Rate](#) and;
- the Borrower meets all eligibility requirements of the FHA-HAMP Option.

The Mortgagee may capitalize in an FHA-HAMP Standalone Loan Modification an amount needed to cover:

- arrearages, which include Mortgagee advances for escrow items
- Projected escrow shortage amount;
- related legal fees and foreclosure and bankruptcy costs for work actually performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as customary and reasonable.

The following costs may not be capitalized in the Loan Modification:

- late fees; and
- costs to complete needed repairs as part of the FHA-HAMP agreement.

If the maximum cumulative value of all Partial Claims funds have been exhausted, the Mortgagee may offer an FHA-HAMP Standalone Loan Modification up to a final Mortgage Payment not exceeding 40 percent of gross monthly income, provided that all other program requirements have been met.

#### (2) FHA-HAMP Standalone Partial Claim

The Mortgagee must offer an FHA-HAMP Standalone Partial Claim as an appropriate Loss Mitigation Option if all the following criteria are met:



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- A Mortgage Payment at or below the target Mortgage Payment cannot be achieved by re-amortizing the Mortgage/outstanding debt for 360 months at the [Market Rate](#).
- The FHA-HAMP Partial Claim will not exceed the 30 percent maximum statutory limit for all Partial Claims combined.
- The Borrower's current interest rate is at or below the Market Rate.
- The Borrower's current Mortgage Payment with re-analyzed escrow is at or below the target Mortgage Payment.
- The Borrower meets all eligibility requirements of the FHA-HAMP Option.

The Mortgagee may utilize an FHA-HAMP Standalone Partial Claim in an amount needed to cover:

- arrearages, which include Mortgagee advances for escrow items
- Projected escrow shortage amount;
- related legal fees and foreclosure and bankruptcy costs for work performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as customary and reasonable.

The following costs may not be included in a Partial Claim:

- late fees; and
- costs to complete needed repairs as part of the FHA-HAMP agreement.

#### **(3) FHA-HAMP Combination Loan Modification and Partial Claim**

The Mortgagee must offer a FHA-HAMP Combination Loan Modification and Partial Claim as an appropriate Loss Mitigation Option if all the following criteria are met:

- a Mortgage Payment at or below the target Mortgage Payment cannot be achieved by re-amortizing the total outstanding debt for 360 months at the Market Rate.
- the Borrower does not meet the requirements for an FHA-HAMP Standalone Partial Claim and;
- the FHA-HAMP Partial Claim will not exceed the 30 percent maximum statutory limit for all Partial Claims combined.
- the Borrower meets all eligibility requirements of the FHA-HAMP Option.

The Mortgagee may utilize an FHA-HAMP Combination Loan Modification and Partial Claim when establishing an affordable monthly payment that requires a Partial Claim in an amount needed to cover:

- arrearages, which include Mortgagee advances for escrow items
- Projected escrow shortage amount;

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- related legal fees and foreclosure and bankruptcy costs for work performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as customary and reasonable.
- principal deferment

The following costs may not be capitalized in the Loan Modification or included in the Partial Claim:

- late fees; and
- costs to complete needed repairs as part of the FHA-HAMP agreement.

If a target Mortgage Payment cannot be achieved due to the amount of arrearages, legal fees and foreclosure costs, bankruptcy cost, and/or principal deferment, the Mortgagee may still utilize an FHA-HAMP Combination Loan Modification and Partial Claim for an eligible Borrower by capitalizing the amount that exceeds the statutory maximum Partial Claim to fully reinstate the Mortgage, if the modified payment is 40 percent or less of the Borrower's gross monthly income.

#### **(D) FHA-HAMP Loan Modification Provisions**

##### **(1) Standard**

The Mortgagee must ensure that the FHA-HAMP Loan Modification fully reinstates the Mortgage and complies with the interest rate and modified principal balance provisions below. Mortgagees must perform a retroactive escrow analysis to ensure that the delinquent payments to be capitalized reflect the actual escrow requirements required for those months. In addition, to allow adequate time to complete the Loan Modification, obtain all required signatures and provide adequate notice to the Borrower of the new payment, Mortgagees may include an additional month in the total outstanding debt to be resolved. The Mortgagee must not provide the Borrower with any cash from the FHA-HAMP Loan Modification.

##### **(2) Interest Rate**

The Mortgagee must ensure that any modified loan, including ARM, GPM or GEM is a fixed rate Mortgage.

At the Mortgagee's discretion, the Mortgagee may reduce Note interest rates below Market Rate; however, discount fees associated with rate reductions are not reimbursable. When increasing Note interest rates, the Mortgagee must calculate the maximum interest allowable as the Market Rate.

##### **(a) Market Rate**

Market Rate is a rate that is no more than 25 bps greater than the most recent Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate for 30-

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year fixed rate conforming Mortgages (U.S. average), rounded down to the nearest one-eighth of 1 percent (0.125 percent), as of the date a TPP is offered to a Borrower for an FHA-HAMP option, or the date the borrower is offered a permanent Disaster Rate and Term Loan Modification.

##### **(b) Market Rate Resources**

The Weekly Primary Mortgage Market Survey results are published on the [Freddie Mac website](#).

##### **(3) Modified Loan Term**

The Mortgagee must re-amortize the total unpaid amount due over 360 months from the due date of the first installment required under the modified FHA-insured Mortgage. The term may be less than 360 months if (i) requested by the Borrower and (ii) a term that is less than 360 does not result in the modified PITI being greater than the target monthly payment.

##### **(E) FHA Mortgage Insurance Coverage and MIP**

When the FHA-HAMP Loan Modification has been processed in accordance with HUD requirements, HUD will extend FHA mortgage insurance coverage to the new principal balance and modified maturity date. FHA insurance will remain in force until the Mortgage has been paid in full, canceled or terminated. The amount of MIP will continue to be based on the scheduled unpaid principal balance of the original Mortgage, without taking into consideration delinquencies or prepayments.

##### **(F) FHA-HAMP Partial Claim Provisions**

The Mortgagee must ensure that an FHA-HAMP Standalone Partial Claim or FHA-HAMP Combination Loan Modification and Partial Claim fully reinstates the Mortgage. Mortgagees must perform a retroactive escrow analysis to ensure that the delinquent payments to be included in the Partial Claim reflect the actual escrow requirements required for those months. In addition, to allow adequate time to complete the Partial Claim, obtain all required signatures and provide adequate notice to the mortgagor of the new payment, Mortgagees may include an additional month in the total outstanding debt to be resolved. The Mortgagee must not provide the Borrower with any cash from the FHA-HAMP Option.

##### **(1) Statutory Maximum for Partial Claims**

The maximum cumulative value of all Partial Claims paid with respect to a Mortgage must not exceed 30 percent of the Mortgage's unpaid principal balance. This maximum cumulative value must be established as of the date of Default at the time of payment of the initial Partial Claim on such Mortgage, and will remain constant for the life of the Mortgage.

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### **(2) Interest on Partial Claims**

No interest will accrue on the Partial Claim.

### **(3) Payment of Partial Claim**

HUD will not require payment on the Partial Claim until the first of the following events occurs: the maturity of the Mortgage, the sale of the Property, the Payoff of the Mortgage, or if provided for under the Partial Claim note, the termination of FHA insurance, except that HUD will agree to subordinate the Partial Claim note to an FHA-Streamline Refinance.

### **(G)FHA-HAMP Trial Payment Plans**

The Mortgagee must ensure that the Borrower successfully completes a TPP prior to executing any FHA-HAMP Option.

#### **(1) Definition**

A Trial Payment Plan (TPP) is a payment plan for a minimum period of three months, during which the Borrower must make the agreed-upon consecutive monthly payments prior to final execution of the FHA-HAMP documents.

#### **(2) Standard**

The Mortgagee must ensure that the Borrower successfully completes a TPP before executing permanent FHA-HAMP documents, for a minimum of three months.

### **(3) Entering into the Trial Payment Plan Agreement**

#### **(a) Definition**

A Trial Payment Plan (TPP) Agreement is a written document codifying the TPP terms, which must be provided to the Borrower prior to the first Trial Payment Due Date.

#### **(b) Standard**

##### **(i) Trial Payment Plan Terms**

The Mortgagee must ensure that the following apply to interest rates and monthly payments, and causes of TPP failure under the TPP Agreement:

- The interest rate for the TPP and the permanent FHA-HAMP Loan Modification must not be greater than Market Rate.
- The permanent Market Rate is established when the TPP is offered to the Borrower.

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- The established monthly permanent FHA-HAMP Loan Modification Payment must be the same or less than the established monthly trial payment.
- Agreement document stipulates that, after successfully completing the TPP, the Borrower must continue making payments in accordance with the terms of the TPP Agreement until the permanent FHA-HAMP Mortgage has been ratified by all parties.
- Agreement documents stipulate the causes of TPP failure. The Borrower has failed the TPP when one of the following occurs:
  - the Borrower vacates or abandons the Property; or
  - the Borrower does not make a scheduled TPP payment by the last Day of the month the payment was due.

#### **(ii) Start of Trial Payments**

The Mortgagee must send the TPP Agreement to the Borrower at least 15 Days before the date the first trial payment is due. Borrowers do not need to sign and return the TPP Agreement. All parties on the original Note and Mortgage and all parties that will be subject to the modified Mortgage and/or Partial Claim must be provided the TPP Agreement unless:

- a Borrower or co-Borrower is deceased;
- a Borrower and co-Borrower are divorced; or
- a Borrower or co-Borrower on the original Note and Mortgage has been released from liability in connection with an assumption performed in accordance with HUD's requirements.

#### **(c) Required Documentation**

The Mortgagee must retain a copy of the TPP Agreement in the Claim Review File.

#### **(4) Waiver of Late Charges**

The Mortgagee must waive Late Charges under the original Mortgage if the Borrower is paying as agreed on the TPP.

#### **(5) Trial Payment Plan – Application of Payments**

For FHA-HAMP Mortgages, the Mortgagee must treat a trial payment in an amount less than a full monthly payment under the existing Mortgage as a Partial Payment and place them in the Borrower's suspense account. These Partial Payments are to then be applied in accordance with HUD's [Partial Payments for Mortgages in Default](#) guidance and any applicable federal regulations.

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#### **(6) End of Trial Payment Plan Period**

##### **(a) Standard**

The Mortgagee must offer the Borrower a permanent FHA-HAMP Option after the Borrower's successful completion of a TPP.

The Mortgagee must:

- prepare the permanent FHA-HAMP Modification Agreement early enough to allow sufficient processing time for the modification to be effective no later than the first day of the second month following the final TPP month;
- provide the Borrower with the permanent FHA-HAMP documents to be executed by required parties at least 30 Days before the effective date of the modification with notification of the date by which signed documents must be returned;
- sign the FHA-HAMP Modification Agreement and provide a fully ratified copy to the Borrower no later than 15 Days following receipt of the Borrower-signed documents; and
- update its servicing system and files to reflect the FHA-HAMP transaction.

##### **(b) Trial Payment Plan Failure**

The Borrower has failed the TPP when one of the following occurs:

- the Borrower vacates or abandons the Property; or
- the Borrower does not make a scheduled TPP payment by the last Day of the month the payment was due.

##### **(c) Review for Other Loss Mitigation Options after Trial Payment Plan Failure**

##### **(i) Standard**

The Mortgagee must re-evaluate the Borrower's eligibility for other Loss Mitigation Options if a Borrower fails to successfully complete a TPP, as follows:

- if the Borrower provides documentation demonstrating their financial circumstances have changed since the Mortgagee's previous loss mitigation evaluation, the Mortgagee must verify the change in financial circumstances and re-evaluate the Borrower for Loss Mitigation Options; or
- if the Borrower does not provide documentation demonstrating their financial circumstances have changed since the Mortgagee's previous loss mitigation evaluation, the Mortgagee must evaluate

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the Borrower for Home Disposition Options prior to initiating foreclosure.

##### **(ii) Required Documentation**

The Mortgagee must include documentation supporting any changes in the Borrower's financial circumstances or employment status in the Mortgagee's Claim Review File.

##### **(7) Funds Remaining at the End of Trial Payment Period**

###### **(a) Successful Completion of Trial Payment Plan**

For unapplied funds remaining at the end of the trial payment period that do not total a full PITI payment, the Mortgagee must apply these funds to any calculated escrow shortage or to reduce any amounts that would otherwise be capitalized onto the principal balance.

###### **(b) Trial Payment Plan Failure**

If the Borrower does not complete the TPP, the Mortgagee must apply all funds held in suspense to the Borrower's account in the established order of priority.

##### **(8) Trial Payment Plans during Foreclosure**

The Mortgagee must suspend and/or terminate foreclosure action, depending on state law requirement, during the TPP. In the event the Borrower fails to make a payment required under a TPP, the Mortgagee must review the Borrower for other appropriate Loss Mitigation Options before commencing or continuing a foreclosure.

HUD provides an automatic 90-Day extension for the Mortgagee to commence or recommence foreclosure or initiate another Loss Mitigation Option, should a TPP fail.

##### **(9) Reporting of Trial Payment Plans**

The Mortgagee must report the use of a TPP under an FHA-HAMP Option in SFDMS.

##### **(H)FHA-HAMP Loan Documents**

The Mortgagee must ensure that the Mortgage is not in foreclosure at the time the FHA-HAMP Loan documents are executed. The Mortgagee must remove the Mortgage from foreclosure prior to executing the FHA-HAMP documents. See [Loss Mitigation during the Foreclosure Process](#).

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FHA does not provide a model for FHA-HAMP Loan Modification documents, but the Mortgagee must ensure the FHA-insured Mortgage remains in a first lien position and is legally enforceable.

#### **(1) FHA-HAMP Partial Claim Promissory Note and Subordinate Mortgage**

##### **(a) Standard**

The Mortgagee must prepare the Partial Claim promissory Note and subordinate Mortgage as follows:

- the promissory Note must be executed with the name of the Secretary;
- the subordinate Mortgage must be prepared and recorded; and
- the Partial Claim promissory Note and subordinate Mortgage/deed of trust must include:
  - the full FHA Case Number;
  - the provisions of HUD's model [Partial Claim Promissory Note and Partial Claim Subordinate Mortgage](#) or a substantially similar document; and
  - any amendments as required by state or federal law or regulations.

The Mortgagee must provide the Borrower with a Partial Claim promissory Note and subordinate Mortgage to be signed by the Borrower and recorded by the Mortgagee.

##### **(b) Required Documentation**

The Mortgagee must retain the following in the Claim Review File:

- a copy of the executed Partial Claim promissory Note and subordinate Mortgage;
- evidence that the Mortgage was timely submitted for recording; and
- the date the Mortgagee received the executed Partial Claim documents from the Borrower and the date the subordinate Mortgage was sent to be recorded.

#### **(2) Recordation of FHA-HAMP Partial Claim Documents**

The Mortgagee must submit executed Partial Claim security instruments for recordation within five business days from the date of receipt from the Borrower or, where HUD execution is required, receipt from HUD. The Mortgagee must submit the security instruments for recordation before filing the FHA-HAMP incentive claim with HUD.

The Mortgagee must ensure that the recordation of the Partial Claim security instruments does not jeopardize the first lien status of the FHA-insured Mortgage; there is no lien priority requirement for the filing of a Partial Claim.



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#### **(3) Legal Fees and Foreclosure Costs for Partial Claims**

The Mortgagee must not include in subsequent disposition claims foreclosure fees and costs that were included and paid in the Partial Claim.

#### **(4) Execution of Partial Claim Documents after Trial Payment Plan**

The Mortgagee must ensure that the Borrower has successfully completed a TPP before executing the Partial Claim promissory Note and subordinate Mortgage.

#### **(5) Reconciliation of Partial Claim Proceeds to Promissory Note Amounts**

If the Mortgagee miscalculates the Partial Claim amount, resulting in an overpayment to the Mortgagee, the Mortgagee must remit the overpaid amount immediately to HUD's [Servicing Contractor](#).

In the event the Mortgagee claimed less than the actual Partial Claim promissory Note amount, the Mortgagee must absorb the cost of the miscalculation.

The Mortgagee must include their review process for ensuring the accurate calculation of Partial Claims in their required QC Plan.

#### **(6) Delivery of Partial Claim Documents**

##### **(a) Standard**

The Mortgagee must deliver to HUD's [Servicing Contractor](#):

- no later than 60 Days from the execution date, the original Partial Claim promissory Note;
- no later than six months from the execution date, the recorded subordinate Mortgage; and
- with each delivery of Partial Claim documents, the Mortgagee must include a cover letter with the FHA case number for the documents that are being delivered.

##### **(b) Partial Claim Discrepancies**

When HUD has received Partial Claim documents that do not fully support the amount claimed by the Mortgagee, HUD will consider the documents incomplete. The Mortgagee must timely correct the deficiencies to satisfy the six-month deadline for the Mortgage to provide complete and accurate Partial Claim documents.

The Mortgagee may use the monthly Missing Documents Report to determine if any Partial Claim documents are missing and outside of the delivery times.

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HUD's [Servicing Contractor](#) may follow up with the Mortgagee if there are any discrepancies between the Mortgagee's cover letter and the documents received.

#### **(7) Requests for Extensions of Time for Delivery of Partial Claim Documents**

##### **(a) Standard**

Mortgagees must periodically check on the status of all unreturned recorded Partial Claim Mortgages by, for example, using the Missing Documents Report issued by HUD's [Servicing Contractor](#).

The Mortgagee may request an extension by submitting the request to the NSC for HUD approval via EVARS when:

- Partial Claim document delivery has been delayed due to events beyond the Mortgagee's control; or
- circumstances have occurred preventing the Mortgagee from timely delivery.

HUD will not approve extensions pertaining to Partial Claim promissory Notes.

##### **(b) Required Documentation**

The Mortgagee must retain in the Claim Review File documentation of any extensions received from HUD.

#### **(8) Failure to Timely Provide Partial Claim Note and Subordinate Mortgage**

When the Mortgagee fails to provide HUD with the Partial Claim promissory Note and subordinate Mortgage within the required time frames, HUD may require reimbursement of the full amount of the Partial Claim.

When directed by HUD, the Mortgagee must reimburse:

- the full claim amount (insurance benefits consisting of the arrearage, principal deferment, if necessary, and any HUD-allowed costs paid in the Mortgagee's claim for mortgage insurance benefits); and
- the incentive fee.

Upon reimbursement of the full amount of the Partial Claim, HUD will endorse any Partial Claim documents in its possession over to the Mortgagee and return them. The Mortgagee must properly record such documents within 30 business days of receipt from HUD.

The Mortgagee must not reverse the application of the Partial Claim funds. The Mortgagee may only pursue repayment of the Partial Claim funds from the

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Borrower under the original terms of the Partial Claim promissory Note and subordinate Mortgage.

HUD will not accept any documentation regarding the Partial Claim and HUD will not refund any funds to the Mortgagee after the Mortgagee has repaid the Partial Claim in accordance with this section.

#### **(9) Servicing of FHA-HAMP Partial Claims**

The Mortgagee remains responsible for servicing the FHA-HAMP Partial Claim until the debt and security instruments are legally recorded in the appropriate jurisdiction and delivered to HUD.

Mortgagees must notify HUD when the first Mortgage is being paid in full or refinanced so HUD may provide a payoff figure on a Partial Claim. HUD's [Servicing Contractor](#) must be contacted to request a payoff quote on the outstanding Partial Claim.

#### **(I) Lien Status**

The Mortgagee must ensure first lien status of the modified Mortgage and must comply with any applicable state or federal laws and regulations in recording the subordinate FHA-HAMP documents.

#### **(1) Subordination Request**

If title to the Property is encumbered with an FHA Title I Mortgage and the Mortgagee servicing the Title II Mortgage has determined that a Subordination Agreement is necessary to ensure HUD's first lien status, the Mortgagee may forward a subordination request to:

U.S. Department of Housing and Urban Development  
Home Improvement Branch  
451 7th Street, SW, Room 9272  
Washington, DC 20410

For Partial Claims or Secretary-held Mortgages, the Mortgagee must contact HUD's Loan Servicing Contractor.

#### **(2) Subordination Notification**

If title to the Property is encumbered with an FHA Title I Mortgage which has been assigned to the Secretary and the Mortgagee servicing the Title II Mortgage has determined that a Subordination Agreement is not required to ensure HUD's first lien status, the servicing Mortgagee of the Title II Mortgage may send a written notification to:

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U.S. Department of Housing and Urban Development  
Albany Financial Operations Center  
52 Corporate Circle  
Albany, NY 12203

#### **(J) Option Failure**

##### **(1) Option Failure as New Default**

If the Mortgage becomes Delinquent following use of the FHA-HAMP Option, the Mortgagee must treat this as a new Default and service the Defaulted Mortgage accordingly.

##### **(2) Delivery of FHA-HAMP Documents to HUD**

If the Mortgage is foreclosed following use of the FHA-HAMP Option, the Mortgagee must upload the FHA-HAMP Loan Modification into [P260](#) when a [conveyance claim](#) is filed.

#### **(K) No Charge to Borrower for FHA-HAMP Option**

The Mortgagee may not charge the Borrower a fee for processing and recording an FHA-HAMP option that is in Default or Imminent Default.

#### **(L) Reporting FHA-HAMP Loan Terms**

The Mortgagee must report in SFDMS the use of an FHA-HAMP.

The Mortgagee must report the characteristics of all FHA-HAMP Loan Modifications and Partial Claims through FHAC or EDI.

#### **(M) FHA-HAMP Incentive**

The Mortgagee may claim an [incentive](#) for use of the FHA-HAMP Option if:

- the permanent FHA-HAMP documents are executed by all required parties within 60 Days of the Borrower's successful completion of the TPP;
- the Mortgagee reports to HUD the characteristics of the FHA-HAMP; and
- three or more full monthly payments are due and unpaid (i.e., 61 Days or more past due) when the FHA-HAMP documents are executed by all required parties.

#### **(N) Non-Incentivized Loan Modification**

##### **(1) Definition**

A non-incentivized Loan Modification refers to a Loan Modification that is ineligible for an incentive claim.

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###### (2) Standard

Mortgagees are required to comply with FHA-HAMP loan modification requirements and must report in FHAC a FHA-HAMP-eligible modification that becomes a non-incentivized loan modification. HUD will not pay an incentive claim under the following circumstances:

- the Loan Modification was not performed in accordance with FHA-HAMP policy;
- the Mortgagee failed to submit the claim within 60 days of the date the FHA-HAMP documents were signed by all required parties; or
- a [Disaster Loan Modification](#) was executed.

###### (3) Reporting Non-Incentivized Loan Modification Terms

The Mortgagee must report in SFDMS the use of a non-incentivized Loan Modification.

The Mortgagee must report the characteristics of all non-incentivized Loan Modifications through [FHAC](#).

##### (O) Loss Mitigation Assumption

###### (1) Definition

Loss Mitigation Assumption refers to the assumption of personal liability for repayment of the Mortgage in accordance with agreed loss mitigation terms by a non-borrower, and satisfies established criteria for loss mitigation approval.

###### (2) Standard

The Mortgagee must obtain the signature of each non-borrower assumptor on:

- all associated written agreements for the approved Loss Mitigation Option; and
- an assumption agreement that conforms with applicable state law for assumption of personal liability for repayment of the Mortgage in accordance with agreed loss mitigation terms.

###### (3) Reporting a Loss Mitigation Assumption

The Mortgagee must report *Reinstated by Assumptor*, Code 21, in SFDMS.

##### vi. Presidentially-Declared Major Disaster Areas

###### (A) Disaster Declarations

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the President has authority to declare a major disaster for any area which has been

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affected by damage of sufficient severity and magnitude to warrant major disaster assistance. Disaster Declarations and information regarding available federal assistance for each disaster incident are posted on the [Federal Emergency Management Agency's \(FEMA\) website](#).

Whenever the President declares a major disaster, the Mortgagee must implement the procedures set forth in this section for each designated area that is eligible for federal disaster assistance.

#### **(B) Moratorium on Foreclosures**

##### **(1) Standard**

FHA-insured Mortgages secured by Properties located in Presidentially-Declared Major Disaster Areas (PMDA) will be subject to a moratorium on foreclosures following the Disaster Declaration. The foreclosure moratorium is:

- effective for a 90-Day period beginning on the date of the Disaster Declaration for that area (HUD may communicate further specific guidance for extension of moratorium periods for individual disasters);
- applicable to the initiation of foreclosures and foreclosures already in process; and
- considered an additional period of time approved by HUD for the Mortgagee to take loss mitigation action or commence foreclosure.

The Mortgagee may submit a request for an extension to HUD's foreclosure-related deadlines via HUD's Extensions and Variances Automated Requests System (EVARS) when prohibited from performing a required activity due to the foreclosure moratorium.

##### **(2) Required Documentation**

The Mortgagee must retain in its Claim Review File any approved extensions from HUD related to a foreclosure moratorium.

##### **(3) Hazard or Flood Insurance Settlement**

The Mortgagee must take no action to initiate or complete foreclosure proceedings, after expiration of a disaster-related foreclosure moratorium, if such action will jeopardize the full recovery of a hazard or flood insurance settlement.

#### **(C) Monitoring of Repairs to Substantially Damaged Homes**

##### **(1) Definition**

A building is considered to be "Substantially Damaged," as defined in the National Flood Insurance Program (NFIP) regulations, when "damage of any origin is sustained by a structure whereby the cost of restoring the structure to its

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before damaged condition would equal or exceed 50 percent of the Market Value of the structure before the damage occurred.”

#### **(2) Standard**

The Mortgagee must take appropriate actions to ensure that repairs to Substantially Damaged Properties comply with the federal building elevation standards, including those established by FEMA. The Mortgagee must ensure compliance with any higher applicable building elevation standard adopted by the state or local government.

#### **(D) Loss Mitigation for Borrowers in PDMDAs**

Should Presidentially-Declared Major Disasters adversely impact a Borrower’s ability to make on-time Mortgage Payments, the Mortgagee must provide the Borrower with forbearance and HUD loss mitigation assistance, where appropriate, as provided in applicable FHA policy guidance.

#### **(1) Loss Mitigation Owner-Occupant Requirement**

The Mortgagees must not deny a Borrower any Loss Mitigation Option solely for failure to occupy a mortgaged Property if the following conditions are met:

- the mortgaged Property is located within a PDMDA;
- the dwelling was the Principal Residence of a Borrower immediately prior to the disaster event;
- a Borrower intends to re-occupy the mortgaged Property upon restoration of the home to habitable condition; and
- the total accumulated mortgage arrearages have not exceeded the equivalent of 12 months Principal, Interest, Taxes, and Insurance (PITI).

#### **(2) Forbearance Options for Borrowers in PDMDAs**

Before considering an affected Borrower for a permanent solution utilizing one of [FHA’s Loss Mitigation Home Retention Options](#), the Mortgagee must first evaluate the Borrower for a forbearance, which allows for one or more periods of reduced or suspended payments without specific terms of repayment.

The Mortgagee may offer forbearance relief to a Borrower with a mortgaged Property or place of employment located within a PDMDA as follows.

#### **(a) Informal Forbearance for Borrowers in PDMDAs**

The Mortgagee may consider Borrowers in PDMDAs for an Informal Forbearance and may offer additional Informal Forbearance periods if the foreclosure moratorium is extended.



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#### **(b) Formal Forbearance for Borrowers in PDMDAs**

The Mortgagee may consider Formal Forbearances for Borrowers in PDMDAs while they are pursuing home repairs and/or resolving verifiable financial difficulties related to the disaster, provided that:

- the forbearance period does not exceed the estimated time needed to complete home repairs as supported by a contract or repair estimate; and
- the total accumulated mortgage arrearages during the forbearance period does not exceed the equivalent of 12 months PITI.

#### **(3) Disaster Loan Modification**

For Borrowers who receive Informal or Formal Forbearances based solely on location of their mortgaged Property or place of employment within a PDMDA, the Mortgagee must offer Rate and Term modifications at the end of the forbearance period based on the following criteria.

#### **(a) Eligibility for Disaster Loan Modification**

The Mortgagee must ensure that Borrowers and their FHA-insured Mortgages meet the following eligibility and term requirements for a Disaster Loan Modification:

- The Mortgage was current or less than 30 Days past due as of the date of the applicable Disaster Declaration.
- The Mortgagee confirms Borrower income is equal to or greater than it was prior to the Disaster using a recent pay stub for income, W-2, bank statement or other documentation reflecting the amount of income.
- As an alternative to providing income documentation, the Borrower can complete a three month Trial Payment Plan (TPP), which will confirm that their income has returned to pre-disaster levels. The TPP does not have to be signed by the Borrower.
- If the Property was Substantially Damaged, the Property repairs must be completed to a habitable condition.
- The Property is owner-occupied.

#### **(b) Terms of the Disaster Loan Modification**

The Mortgagee must modify the Mortgage as follows:

- The total Principal and Interest (P&I) amount of a Borrower's monthly Mortgage Payment must not increase.
- The Mortgagee must capitalize into a modified mortgage balance:
  - the accumulated arrearages for unpaid accrued interest; and
  - eligible unreimbursed Mortgagee advances and related fees and costs chargeable to the Mortgage.



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- The Mortgagee waives the Borrower's accumulated late fees.
- The Mortgagee sets the interest rate at no greater than the Market Rate as defined by HUD.
- The term for the modified loan is 360 months. The term may be less than 360 months if (i) requested by the Borrower and (ii) a term that is less than 360 does not result in the modified P&I being greater than current P&I.
- A Borrower can only receive one Permanent Loss Mitigation Home Retention Option for a PDMDA per disaster.

#### (4) Disaster Standalone Partial Claim

The Mortgagee must evaluate Borrowers for a Disaster Standalone Partial Claim at the end of the Forbearance period if the Borrower does not qualify for a Disaster Loan Modification. Use of the Disaster Standalone Partial Claim requires that each criterion below be met:

- The Mortgage was current or less than 30 Days past due as of the date of the applicable Disaster Declaration.
- The Mortgagee confirms Borrower income is equal to or greater than it was prior to the Disaster using a recent pay stub for income, W-2, bank statement or other documentation reflecting the amount of income.
- As an alternative to providing income documentation, the Borrower can complete a three-month TPP, which will confirm that their income has returned to pre-disaster levels. The TPP does not have to be signed by the Borrower.
- The Property is owner-occupied.
- The total Principal and Interest (P&I) amount of a Borrower's monthly Mortgage Payment must not increase.
- The Mortgagee waives the Borrower's accumulated late fees.
- The Disaster Standalone Partial Claim is subject to the maximum statutory value of all Partial Claims for an FHA-insured Mortgage.
- Borrower(s) can only receive one Permanent Loss Mitigation Home Retention Option for a PDMDA.

The statutory maximum value of all combined Partial Claims is 30 percent of the Unpaid Principal Balance of each FHA-insured Mortgage and any costs that are approved by the Secretary.

For purposes of calculating the maximum available Partial Claim value for each loss mitigation action, it is the lesser of:

- the Unpaid Principal Balance as of the date of Default associated with the initial Partial Claim, if applicable, multiplied by 30 percent, less any previous Partial Claim(s) paid on the FHA-insured Mortgage; or
- if there are no previous Partial Claim(s), the Unpaid Principal Balance as of the date of the current Default multiplied by 30 percent.

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The Disaster Standalone Partial Claim amount may only include the accumulated arrearages for unpaid accrued interest; and eligible unreimbursed Mortgagee advances and related fees and costs chargeable to the Mortgage.

#### **(5) Required Financial Evaluation for other Loss Mitigation Home Retention Options**

Following evaluation for and completion of approved forbearances, the Mortgagee must evaluate those Borrowers who do not qualify for either the “Disaster Loan Modification” or “Disaster Standalone Partial Claim” Options for other [Loss Mitigation Home Retention Options](#).

Borrowers who do not currently have an increase in living expenses but are Delinquent due to a forbearance received following a Disaster Declaration are deemed to satisfy the eligibility conditions for FHA Loss Mitigation Home Retention Options.

#### **(a) Terms of the Mortgage are Unaffected**

Nothing in this SF Handbook confers any right to a Borrower to any loss mitigation or any other action by HUD or the Mortgagee. Further, nothing in this Handbook interferes with any right of the Mortgagee to enforce its private contractual rights under the terms of the Mortgage. All private contractual rights and obligation remain unaffected by anything in this Handbook. Where a Mortgagee chooses to enforce its contractual rights after expiration of any automatic foreclosure moratorium, the standard time frames to initiate foreclosure and reasonable diligence in prosecuting foreclosure following expiration of a foreclosure moratorium will apply.

#### **(b) Use of Loan Modification Option**

The Mortgagee must ensure that the Borrower occupies the dwelling as an owner-occupant before completing a Loan Modification.

#### **(6) Home Disposition Options**

Pre-Foreclosure Sale or Deed-in-Lieu of Foreclosure are also available to Borrowers that are in disaster areas, under the following conditions:

- Borrowers who do not qualify for a Disaster Standalone PC or Modification, or FHA-HAMP are deemed to satisfy the borrower eligibility conditions for FHA Loss Mitigation Disposition Options.
- The Mortgage was current or less than 30 Days past due as of the date of the applicable Disaster Declaration.
- The Mortgagee obtains from the Borrower a recent pay stub for income, W-2, bank statement or other documentation reflecting the amount of income.
- The Property was owner-occupied.

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###### **(7) Suspension of Reporting to Consumer Reporting Agencies**

The Mortgagee must suspend reporting of delinquencies to consumer reporting agencies for a Borrower who is granted disaster-related Mortgage Payment relief and is otherwise performing as agreed.

###### **(8) Waiver of Late Charges**

The Mortgagee must waive Late Charges if the Borrower is on a Forbearance Plan or paying as agreed on a Loss Mitigation Option.

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### I. Home Disposition Options

#### i. Definition

Home Disposition Options are the Loss Mitigation Options of Pre-Foreclosure Sales (PFS) and Deed-in-Lieu (DIL).

#### ii. Pre-Foreclosure Sales

##### (A) Definition

A Pre-Foreclosure Sale (PFS), also known as a Short Sale, refers to the sale of real estate that generates proceeds that are less than the amount owed on the Property and in which the lien holders agree to release their liens and forgive the deficiency balance on the real estate. There are three types of PFS transactions:

- Streamlined PFS;
- Streamlined PFS for Servicemembers with Permanent Change of Station (PCS) Orders; and
- Standard PFS.

##### (B) PFS Outreach Requirements

###### (1) Form HUD-90035

When the Mortgagee has identified a Borrower as a qualified candidate for the PFS Program or a Borrower has expressed an interest in participating, the Mortgagee must mail form [HUD-90035](#), *Information Sheet: Pre-foreclosure Sale Procedure*, adding its toll-free or collect telephone number to the form.

###### (2) Disclosure Requirements for PFS Transactions

Prior to approving the Borrower for the PFS Option, the Mortgagee must notify the Borrower of the following in writing:

- The Mortgage must be in Default on the date the PFS transaction closes, pursuant to section 204(a)(1)(D) of the National Housing Act, 12 U.S.C. 1710.
- PFS transactions are reported to consumer reporting agencies and will likely affect the Borrower's ability to obtain another Mortgage and other types of credit.
- If the Borrower is a servicemember, it is recommended that the Borrower obtain guidance from their employer regarding the PFS's impact on their security clearance and employment.

Where the Property is encumbered with a PACE obligation, the property sales contract must indicate whether the obligation will remain with the Property or be satisfied by the seller at, or prior to closing. Where the obligation will remain, all terms and conditions of the PACE obligation must be fully disclosed to the buyer

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in accordance with applicable law (state and local) and made part of the sales contract.

### **(C) Eligibility**

#### **(1) Defaulted Mortgage Status**

The Mortgagee may consider the PFS Option for Borrowers who are in Default or who are current but facing Imminent Default. The Borrower need not be in Default for Mortgagee approval of the PFS option; however, on the date the PFS closing occurs, the Mortgagee must ensure that the Mortgage is in Default status (minimum 31 Days Delinquent).

#### **(2) Property Maintenance**

Until the PFS transaction has closed, the Borrower must maintain the Property in “ready to show” condition, make basic property repairs, and perform all normal property maintenance activities (e.g., interior cleaning, lawn maintenance, etc.). The Borrower must report all damage and/or repair expenses resulting from fire, flood or other natural causes immediately to the insurance company and Mortgagee.

#### **(3) Borrower Eligibility**

##### **(a) Streamlined PFS**

###### **(i) Definition**

A Streamlined PFS is a PFS Option available for Owner-Occupant and Non-Occupant Borrowers and does not require verification of hardship.

###### **(ii) Streamlined PFS Standards**

The Mortgagee must ensure that Non-Occupant Borrowers meet the following requirements:

- Borrower(s) are 90 Days or more Delinquent on their FHA-insured Mortgage as of the date of the Mortgagee’s review; and
- each Borrower has a credit score of 620 or below.

The Mortgagee must ensure that the Owner-Occupant Borrower meet the following requirements:

- the Borrower is 90 Days or more Delinquent on the FHA-insured Mortgage as of the date of the Mortgagee’s review;
- each Borrower has a credit score of 620 or below; and
- the Borrower must have been reviewed for Loss Mitigation Home Retention Options as follows:
  - the Borrower has failed a TPP within the last six months;

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- the Borrower has failed an FHA-HAMP Option within the last two years;
- the Borrower has been deemed ineligible for all Loss Mitigation Home Retention Option;
- the Borrower received an SFB - Unemployment but did not otherwise qualify for a permanent Loss Mitigation Home Retention Option by the end of the Special Forbearance period; or
- the Borrower has been deemed eligible for and offered a Loss Mitigation Home Retention Option. However, each Borrower must have a credit score below 580 and must provide written documentation stating that they choose not to accept the Loss Mitigation Home Retention Option.

##### **(iii) Eligible Properties**

The Mortgagee may offer the Streamlined PFS process for all Properties securing FHA-insured Mortgages, provided that all Borrowers meet program requirements. Such Properties may be vacant but cannot be condemned.

#### **(b) Streamlined PFS for Servicemembers with PCS Orders**

##### **(i) Definition**

A Streamlined PFS for Servicemembers with PCS Orders is a Streamlined PFS that may be offered to servicemembers who must relocate to a new duty station at least 50 miles away from their existing residence, without the Mortgagee verifying hardship.

##### **(ii) Streamlined PFS for Servicemembers with PCS Orders Standards**

The Mortgagee must ensure that servicemembers meet the following requirements for a Streamlined PFS for Servicemembers with PCS Orders:

- The servicemember has PCS Orders to relocate to a duty station at least 50 miles away from their existing residence and provides the Mortgagee with a copy of such orders.
- The servicemember submits an affidavit certifying that:
  - the Property securing the FHA-insured Mortgage is or was their Principal Residence when the PCS orders were issued; and
  - new permanent housing has been or will be obtained as a result of the orders.

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###### **(iii) Eligible Properties**

The Mortgagee may offer the Streamlined PFS process for all Properties securing FHA-insured Mortgages, provided that all Borrowers meet program requirements. Such Properties may be vacant but cannot be condemned.

###### **(c) Standard PFS**

###### **(i) Definition**

A Standard PFS Option is a PFS Option available for Owner-Occupant Borrowers who are experiencing a hardship affecting their ability to sustain their Mortgage, as determined by the [Deficit Income Test \(DIT\)](#) and:

- are in Default; or
- are current or less than 30 Days past due but facing Imminent Default due to a hardship as described in the [Eligible Borrowers](#) section.

###### **(ii) Standard PFS Standards**

The Mortgagee must first determine if the Borrower is eligible for a Streamlined PFS Option prior to reviewing the Borrower for a Standard PFS.

###### **(iii) Eligible Properties**

The Mortgagee may offer the Standard PFS process for all owner-occupied Properties securing FHA-insured Mortgages, provided that all Borrowers meet program requirements. Such Properties may be vacant but cannot be condemned.

###### **(iv) Eligible Borrowers**

The Mortgagee may consider for Standard PFS transactions those Borrowers in Default or in Imminent Default due to a hardship affecting their ability to sustain their Mortgage.

###### **(v) Required Financial Documentation for Standard PFS**

Prior to approving a Borrower for a Standard PFS, the Mortgagee must review the [Borrower Income and Assets](#) to perform the DIT calculation.

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#### **(vi) Deficit Income Test for Standard PFS**

##### **Definition**

The Deficit Income Test (DIT) is a financial analysis test used for Standard PFS transactions to determine if a Borrower can sustain their Mortgage.

##### **DIT Calculation**

In performing the DIT, the Mortgagee subtracts the Borrower's total monthly expenses from the total monthly net income.

##### **DIT Results**

The Mortgagee must review a Borrower with a positive DIT amount for Loss Mitigation Home Retention Options, unless that Borrower was previously denied for those options or if that Borrower qualifies for a Streamlined Option.

A DIT yielding a negative amount indicates that the Borrower's expenses exceed their income each month and a PFS may be an appropriate Loss Mitigation Option for the Borrower.

#### **(vii) Required Imminent Default Documentation**

When approving a Borrower for a Standard PFS based on the Borrower's Imminent Default, the Mortgagee's Claim Review File must include evidence that the DIT results in a negative value.

#### **(viii) Exceptions for Non-Owner Occupants in Standard PFS Transactions**

HUD authorizes Mortgagees to grant exceptions to Non-Occupant Borrowers when the following can be demonstrated:

- need to vacate: the non-occupancy was related to the cause of Default; and
- not purchased/used as rental: the subject Property was not purchased as a rental or used as a rental for more than 18 months prior to the Borrower's acceptance into the PFS Program.

#### **(d) Corporations or Partnerships Requesting PFS Option**

The Mortgagee must submit a variance request to use the PFS Option to the NSC via EVARS when the Property is owned by a corporation or partnership.



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#### **(D) Property Valuation**

##### **(1) Appraisals**

###### **(a) Standard**

The Mortgagee must obtain a standard electronically-formatted appraisal performed by an [FHA Roster Appraiser](#) pursuant to the following requirements:

- The appraisal must contain an “As-Is” FMV for the subject Property.
- A copy of the appraisal must be provided to the homeowner, sales agent, or HUD, upon request.

###### **(b) Appraisal Validity Period**

The as-is appraisal used for a PFS transaction is valid for 120 Days. If a Mortgagee determines that a subsequent as-is appraisal is required, the Mortgagee may obtain a new as-is appraisal, even if the Property was appraised by an FHA Roster Appraiser within the preceding 120 Days. If a third or any subsequent appraisal is required, the Mortgagee must request approval from the NSC.

###### **(c) Required Analysis and Reporting of a PACE Obligation**

The Appraiser must review the sales contract and property tax records for the Property to determine the amount outstanding and the terms of the PACE obligation:

- if the Mortgagee notifies the Appraiser that the subject Property will remain subject to a PACE obligation;
- when the Appraiser observes that the property taxes for the subject Property are higher than average for the neighborhood and type of dwelling; or
- when the Appraiser observes energy-related building components or equipment or is aware of other PACE-allowed improvements during the inspection process.

The Appraiser must report the outstanding amount of the PACE obligation for the subject Property and provide a brief explanation of the terms.

Where energy and other PACE-allowed improvements have been made to the Property through a PACE program, and the PACE obligation will remain outstanding, the Appraiser must analyze and report the impact on value of the Property, whether positive or negative, of the PACE-related improvements and any additional obligation (i.e., the PACE special assessment).

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### (2) Broker's Price Opinions and Automated Valuation Models

#### (a) Standard

When the appraisal has been deemed unacceptable, the Mortgagee must obtain a Broker's Price Opinion (BPO) or Automated Valuation Model (AVM) that is within 10 percent of the value of the Property as determined by the as-is appraisal performed by an FHA Roster Appraiser. An acceptable BPO or AVM is one that is utilized by the Mortgagee in its existing standard business processes.

#### (b) Required Documentation

The Mortgagee must retain in the Claim Review File a copy of the BPO or AVM supporting the Property Value.

### (3) Request for Variance for Property Valuation

#### (a) Standard

A Mortgagee must submit a request for a variance through EVARS to approve a PFS transaction if one of the following conditions exists:

- the current appraised value of the Property is less than the unpaid principal balance by an amount of \$75,000 or greater;
- the appraised value is less than 50 percent of the unpaid principal balance; or
- the appraisal is deemed unacceptable because the as-is value cannot be affirmed using a BPO or AVM within 10 percent of the value.

#### (b) Variance Request

The Mortgagee must note on the variance request the specific reason for the request and attach any supporting documents needed for HUD review. The Mortgagee must obtain approval before authorizing the marketing of the Property.

### (4) List Price

The Mortgagee must ensure that the Borrower lists the Property for sale at no less than the "As Is" value as determined by an appraisal completed in accordance with the requirements in [Appraiser and Property Requirements for Title II Forward and Reverse Mortgages](#).

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### (E) Property Condition

#### (1) Surchargeable Damage

##### (a) Definition

Surchargeable Damage is damage to a Property caused by fire, flood, earthquake, tornado, hurricane, boiler explosion (for condominiums only) or Mortgagee Neglect.

##### (b) Standard

The Mortgagee is responsible for the cost of Surchargeable Damage.

##### (c) PFS Request for Damaged Property

The Mortgagee must request NSC approval via EVARS before approving the use of the PFS Option for a Property with Surchargeable Damage as follows:

- The Mortgagee must first obtain the Government's Estimate of the Cost to Repair the Surchargeable Damage by contacting HUD's Mortgagee Compliance Manager ([MCM](#)).
- Upon receipt of the Government's Estimate of the Cost to Repair, the Mortgagee must submit form [HUD-90041](#), *Request for Variance: Pre-foreclosure Sale Procedure*, via EVARS to obtain NSC approval prior to entering into a PFS Agreement with the Borrower. The Mortgagee must note on the variance request the specific reason for the request and attach any supporting documents needed for the NSC's review.

##### (d) "As-Is" Subject to Surchargeable Damage

If the Property is being sold "As Is" subject to the Surchargeable Damage, the Mortgagee must deduct the Government's Repair Cost Estimate of the damage from its PFS Claim.

##### (e) "As Repaired" Subject to Surchargeable Damage

If the Property is being sold "As Repaired" and funds for Surchargeable Damage repairs are escrowed or provided as a credit to the Borrower at closing, the Mortgagee must not include in its Net Sale Proceeds calculation the amount of the repair escrow or repair credit.

#### (2) Damage other than Surchargeable Damage

If the damage is not considered Surchargeable Damage, the Mortgagee is not required to obtain NSC approval prior to approving the PFS Agreement.

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### **(3) Hazard Insurance Claim**

Where applicable, the Mortgagee must work with the Borrower to file a hazard insurance claim and either:

- use the proceeds to repair the Property; or
- adjust the PFS Claim by the amount of the insurance settlement (Non-Surchargeable Damage) or the Government's Repair Cost Estimate.

### **(4) Disclosure of Damage after PFS Approval**

In the event the Mortgagee becomes aware that the Property has sustained significant damage after a Borrower has received the Approval to Participate (ATP) in the PFS Program, the Mortgagee must re-evaluate the Property to determine if it continues to qualify for the PFS Program or terminate participation if the extent of the damage changes the Property's Fair Market Value (FMV).

### **(F) Condition of Title**

The Mortgagee must ensure that all FHA-insured mortgaged Properties sold under the PFS Program have marketable title.

Before approving a Borrower for participation in the PFS Program, the Mortgagee must obtain a title search or preliminary report and determine whether the title is impaired by:

- unresolvable title problems;
- liens that cannot be discharged as permitted by HUD; or
- a PACE obligation.

### **(G) Owner-Occupant Borrower Compensation**

#### **(1) Compensation Amount**

HUD offers Owner-Occupant Borrowers who act in good faith and successfully sell their Properties using the PFS Option a compensation of up to \$3,000.

#### **(2) Use of Compensation**

The Owner-Occupant Borrower may:

- apply the entire amount of the \$3,000 compensation or a portion of it to resolve liens, including a PACE obligation;
- offset the sales transaction costs not paid by HUD (including a home warranty plan fee, costs of optional repairs, and the buyer's closing expenses); and/or
- use the compensation for relocation or transition assistance.

The Mortgagee must instruct the Closing Agent to:

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- pay the HUD relocation or transition assistance from Net Sale Proceeds; and
- itemize on the Closing Disclosure or similar legal document any relocation or transition assistance received by HUD or from other entities.

#### **(3) Required Documentation**

The Mortgagee must ensure that the Closing Disclosure or similar legal document accurately reflects the use of any Borrower compensation amount.

#### **(H)PFS Program Participation Requirements**

##### **(1) Approval to Participate**

###### **(a) Definition**

A Pre-Foreclosure Sale (PFS) Approval to Participate (ATP) is an agreement signed by the Borrower to confirm their willingness to comply with the PFS Program requirements.

###### **(b) Standard**

After determining that a Borrower and Property meet the PFS eligibility requirements, the Mortgagee must notify the Borrower by sending:

- an ATP in the PFS Program (form [HUD-90045](#), *Approval to Participate*), including the date by which the Borrower's Sales Contract must be executed under [Pre-Foreclosure Sale Marketing Period](#) guidance; and
- a Pre-Foreclosure Sale Addendum.

The Mortgagee must send these documents to the Borrower via methods providing confirmation or a timestamp of delivery.

The Mortgagee must receive the signed ATP within 10 Days of the date on the ATP.

##### **(2) Use of Real Estate Broker**

###### **(a) Borrower Retention of Real Estate Broker**

The Borrower is responsible for retaining the services of a real estate broker/agent within seven Days of the date of the ATP.

###### **(b) Required Listing Disclosure**

The Mortgagee must ensure that the established Listing Agreement between the seller and the agent/broker includes the following cancellation clause:

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“Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the Broker, and without payment of a commission or any other consideration if the property is conveyed to the mortgage insurer or the mortgage holder. The sale completion is subject to approval by the mortgagee.”

#### **(c) Real Estate Broker Duties**

The real estate broker/agent must market the Property within the pre-established time frame stated in the ATP and list the Property in accordance with the [property valuation](#) requirements.

#### **(d) Real Estate Broker Conflicts of Interest**

The real estate broker/agent selected must have no conflict of interest with the Borrower, the Mortgagee, the Appraiser or the buyer associated with the PFS transaction. The broker/agent must not claim a sales commission on a PFS of a broker's/agent's own Property or that of a spouse, sibling, parent, or child.

Any conflict of interest, appearance of a conflict, or self-dealing by any of the parties to the transaction is strictly prohibited.

### **(3) Arm's Length PFS Transaction**

#### **(a) Definition**

An Arm's Length PFS Transaction is between two unrelated parties that is characterized by a selling price and other conditions that would prevail in an open market environment and without hidden terms or special understandings existing between any of the parties involved in the transaction.

#### **(b) Standard**

The Mortgagee must ensure that the following arms-length requirements apply to parties involved in PFS transactions:

- Any PFS proposed by the Borrower or their agent and approved by the Mortgagee must be an Arm's Length Transaction between the Borrower and prospective buyer, subject to the exceptions in the [Permitted Non-Arms-Length Transactions](#) section.
- Except for real estate agents and brokers representing a party to the PFS, no party that is a signatory on the sales contract, including addenda, can serve in more than one capacity.
- The broker hired to sell the Property must not share a business interest with the Mortgagee.
- If the Mortgagee knows that a shared interest exists between the Appraiser and sales agent, the Mortgagee must note this in the Claim Review File.

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- All doubts will be resolved in a manner to avoid a conflict of interest, the appearance of conflict, or self-dealing by any of the parties.

#### **(c) Permitted Non-Arms-Length Transactions**

HUD permits non-Arm's Length PFS Transactions, to the extent necessary to comply with state law, where state law prohibits placement of an Arm's Length Transaction requirement on property sales.

If clauses (a) and (c) of the PFS Addendum are impermissible under state law, the Mortgagee may strike these clauses from the PFS Addendum prior to execution, provided that the transaction complies with all PFS Program requirements.

#### **(d) Relocation Service Contribution**

The Mortgagee may permit a relocation service affiliated with the Borrower's employer to contribute a fixed sum towards the proceeds of the PFS transaction without altering the arms-length nature of the sale, so long as the result is an outright sale of the Property and cancellation of the FHA mortgage insurance.

#### **(4) Mortgagee Monitoring of PFS**

The Mortgagee must monitor the PFS to ensure the Borrower's compliance with the terms in the ATP and with all PFS Program requirements.

The Mortgagee must terminate a Borrower's participation in the PFS Program in the event of noncompliance.

#### **(I) Pre-Foreclosure Sale Marketing Period**

##### **(1) Maximum Marketing Period**

The Borrower has four months from the date of the Borrower's ATP to acquire a contract of sale.

##### **(2) Minimum Marketing Period**

The Mortgagee must ensure that PFS Properties are listed in the Multiple Listing Service (MLS) for a minimum of 15 Days before offers are evaluated. After this initial listing period, the broker/agent may evaluate offers as they are received.

This 15-Day minimum marketing period must follow the date of the Borrower's ATP.

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#### (3) Extension to PFS Marketing Period

HUD provides an automatic two-month extension to the deadline to initiate foreclosure for completion of a PFS transaction under the following conditions:

- the Mortgagee has an “A” Tier 1 score under HUD’s Tier Ranking System (TRS) II; or
- there is a signed contract of sale, but settlement has not occurred by the end of the fourth month following the date of the Borrower’s ATP in the PFS Program.

#### (4) Monthly Review of Marketing Status

On a monthly basis, Mortgagees must review the Property’s marketing status with the Borrower and/or real estate broker/agent.

#### (5) Property Inspection

The Mortgagee must inspect Properties during the PFS period if:

- the Property is [vacant](#);
- the Mortgagee has reason to suspect that the Property has become vacant; or
- the Borrower or Authorized Third Party has not maintained contact with the Mortgagee.

#### (6) Previously Initiated Foreclosures

The Mortgagee may not initiate a four-month PFS marketing period for a Property after the first legal action to initiate foreclosure has occurred.

If the Mortgagee has received an acceptable contract of sale that meets the PFS requirements, the PFS marketing period may only be issued for the time needed to close based on the close of escrow date on the contract of sale.

The Mortgagee may only cancel or temporarily suspend the foreclosure action where such suspension is permissible under state law.

#### (J) Evaluation of Offers

##### (1) Standard

The listing real estate broker/agent must provide the Mortgagee with an offer that:

- yields the highest net return to HUD; and
- meets HUD’s requirements for bids.

The listing real estate broker/agent must ensure that:

- all offers submitted to the Mortgagee for approval are signed by both the seller and the buyer prior to submission; and



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- the PFS Addendum is signed by all the applicable parties (except for the Closing Agent).

#### (2) Back-up Offers

Once an offer has been submitted to the Mortgagee for approval, the listing real estate broker/agent must retain any offer that the seller elects to hold for “back-up” until a determination has been made on the previously submitted offer.

#### (3) Required Documentation

The listing real estate broker/agent must retain all offers received, including offers not submitted for approval, in accordance with state law.

### (K) Contract Approval by Mortgagee

#### (1) Standard

In reviewing the contract of sale, the Mortgagee must:

- ensure that the PFS sale is an outright sale of the Property and not a sale by assumption;
- review the sales documentation to determine that there are:
  - no hidden terms or special agreements existing between any of the parties involved in the PFS transaction; and
  - no contingencies that might delay or jeopardize a timely settlement; and
- determine that the Property was marketed pursuant to HUD requirements and that the minimum required Tiered Net Sale Proceeds have been met.

The following anti-fraud measures apply to PFS transactions:

- A Mortgagee must not approve a Borrower for a PFS if the Mortgagee knows or has reason to know of a Borrower’s fraud or misrepresentation of information.
- All parties involved in a PFS transaction must sign and date a PFS Addendum as a contingency for a PFS transaction to close.

#### (2) Sales Contract Review Period

After receiving an executed contract of sale for a Borrower approved to participate in the PFS Program, the Mortgagee must send to the Borrower form [HUD-90051](#), *Sales Contract Review*, no later than five business days from the Mortgagee’s receipt of an executed contract for sale.

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### **(3) Net Sale Proceeds**

#### **(a) Definition**

Net Sale Proceeds are the proceeds of a PFS sale, calculated by subtracting reasonable and customary closing and settlement costs from the property sales price.

#### **(b) Standard**

Regardless of the Property's sale price, a Mortgagee may only approve a PFS contract for sale if the Tiered Net Sale Proceeds are at or above HUD's minimum allowable thresholds. HUD's requirements for minimum Tiered Net Sale Proceeds, as based on the length of time a Property has been competitively marketed for sale under an ATP, are as follows:

- Days 1-30 of marketing: The Mortgagee may only approve offers that will result in minimum Net Sale Proceeds of 88 percent of the "as-is" appraised FMV.
- Days 31-60 of marketing: The Mortgagee may only approve offers that will result in minimum Net Sale Proceeds of 86 percent of the "as-is" appraised FMV.
- Days 61-120 of marketing: The Mortgagee may only approve offers that will result in minimum Net Sale Proceeds of 84 percent of the "as-is" appraised FMV.

The Mortgagee has the discretion to deny or delay sales where an offer may meet or exceed the 84 percent, if it is presumed that continued marketing would likely produce a higher sale amount.

The Mortgagee is liable for any FHA Insurance Claim Overpayment on a PFS transaction that closes with less than the required Tiered Net Sale Proceeds, unless a variance has been granted by HUD.

#### **(c) Settlement Costs**

##### **(i) Allowable Settlement Costs**

The Mortgagee may include the following settlement costs in its Net Sale Proceeds calculation:

- sales commission consistent with the prevailing rate but, not to exceed 6 percent;
- real estate taxes prorated to the date of closing;
- local/state transfer tax stamps and other closing costs customarily paid by the seller, including the seller's costs for a Title Search and Owner's Title Insurance;

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- compensation payable to the Owner-Occupant Borrower of \$3,000, or to be used to resolve junior liens;
- upon extinguishing the Owner-Occupant Borrower's compensation of \$3,000, HUD will allow an additional \$1,500 of Net Sale Proceeds to be used to resolve junior liens, for a total of \$4,500;
- for Non-Occupant Borrowers, HUD will allow \$1,500 of Net Sale Proceeds to be used to resolve junior liens;
- the entire outstanding Partial Claim amount must be paid when calculating the Net Sale Proceeds. The seller, buyer, or other Interested Party may contribute the difference if the amount of Net Sale Proceeds falls below the allowable threshold; and
- up to 1 percent of the buyer's first mortgage amount if the sale includes FHA financing.

#### **(ii) Unacceptable Settlement Costs**

The Mortgagee must not include the following costs in the Net Sale Proceeds calculation:

- repair reimbursements or allowances;
- home warranty fees;
- discount points or mortgage fees for non FHA-financing;
- Mortgagee's Title Insurance fee; and
- [Third-Party Fees](#) incurred by the Mortgagee or Borrower to negotiate a PFS.

#### **(d) Third-Party Fees**

With the exception of reasonable and customary real estate commissions, the Mortgagee must ensure that third-party fees incurred by the Mortgagee or Borrower to negotiate a PFS are not included on the Closing Disclosure or similar legal documents unless explicitly permitted by state law.

The Mortgagee, its agents, or any outsourcing firm it employs must not charge any fee to the Borrower for participation in the PFS Program.

#### **(e) Partial Claim**

The Mortgagee must ensure that all outstanding Partial Claims are paid in full.

The Mortgagee must deduct any outstanding balance on a Partial Claim Note from the [Net Sale Proceeds](#). The Mortgagee must send sufficient proceeds from the PFS to satisfy the Partial Claim directly to HUD's Loan Servicing Contractor.

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If, after satisfying the Partial Claim, the Net Sale Proceeds fail to meet the applicable Tiered Net Sale Proceeds requirement, the Mortgagee must request and obtain approval from HUD via EVARS before closing.

#### (4) Title I Liens

If the Mortgagee discovers that a Borrower has a HUD Title I Mortgage secured by the Property, the Mortgagee must contact the Title I subordinate lien holder to advise the Borrower's participation in a PFS. HUD may require the Mortgagee to negotiate the release of the lien in order to proceed with a PFS.

If the Title I Mortgage has been assigned to HUD, the Mortgagee must contact HUD's Financial Operations Center for guidance:

U.S. Department of Housing and Urban Development  
Financial Operations Center  
52 Corporate Circle  
Albany, New York 12203.  
1-800-669-5152/ fax (518) 862-2806

#### (5) Discharge of Junior Liens

The Mortgagee must provide for the discharge of junior liens as follows:

- If the Borrower has the financial ability, the Borrower must be required to satisfy or obtain release of liens.
- If the Owner-Occupant Borrower receives compensation (\$3,000), this compensation may be applied towards discharging liens.
- If no other sources are available, both the Owner-Occupant Borrower and the Non-Occupant Borrower may obligate up to an additional \$1,500 from sale proceeds towards discharging liens or encumbrances.

#### (6) Section 235 Recapture

The Mortgagee must first determine if the Mortgage is subject to recapture as referenced in [Section 235 Mortgages](#). If a recapture amount is owed to HUD, the Mortgagee must contact HUD's [Servicing Contractor](#) prior to approving the PFS.

### (L) Closing and Post-Closing Responsibilities

#### (1) Mortgagee Responsibilities Prior to Closing

The Mortgagee must provide the Closing Agent with:

- form [HUD-90052](#), *Closing Worksheet*, which lists all amounts payable from Net Sale Proceeds; and
- the PFS Addendum that was signed by:
  - buyers;
  - buyers' agent;

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- sellers;
- sellers' agent (listing agent); and
- transaction facilitators/negotiators, if applicable.

The Mortgagee must receive from the Closing Agent:

- a copy of the Closing Disclosure or similar legal document which includes a calculation of the actual Net Sale Proceeds, and
- the executed form [HUD-90052](#), which must be included in the Claim Review File.

The Mortgagee must review the Final Terms of the PFS Transaction to ensure that:

- the final terms of the PFS transaction are consistent with the purchase contract;
- only allowable settlement costs have been deducted from the seller's proceeds; and
- the Net Sale Proceeds will be equal to or greater than the allowable thresholds.

#### **(2) Closing Agent Responsibilities after Final Approval**

Once the Mortgagee gives final approval for the PFS and the settlement occurs, the Closing Agent must:

- pay the expenses out of the Net Sale Proceeds and forward the Net Sale Proceeds to the Mortgagee;
- forward a copy of the Closing Disclosure or similar legal document to the Mortgagee to be included in the Claim Review File no later than three business days after the PFS transaction closes; and
- sign the PFS Addendum on or before the date the PFS transaction closes, unless explicitly prohibited by state statute.

#### **(3) Satisfaction of Mortgage Debt**

Upon receipt of the portion of the Net Sale Proceeds designated for mortgage satisfaction, the Mortgagee must satisfy the Mortgage debt and may file a [claim for mortgage insurance benefits](#).

### **(M) Early Termination of PFS Program Participation**

#### **(1) Standard**

##### **(a) Borrower-Initiated Termination**

The Mortgagee must permit a Borrower to voluntarily terminate participation in the PFS Program at any time.

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#### (b) Mortgagee-Initiated Termination

The Mortgagee may terminate a Borrower's PFS Program participation at its discretion for any of the following reasons:

- discovery of unresolvable title problems;
- determination that the Borrower is not acting in good faith to market the Property;
- significant change in property condition or value; or
- re-evaluation based on new financial information provided by the Borrower indicating the case does not qualify for the PFS Option.

#### (c) Notification of PFS Program Participation Termination

The Mortgagee must forward to the Borrower a date-stamped, written explanation for terminating their program participation. This letter is to include the "end-of-participation" date for the Borrower.

#### (2) Required Documentation

The Mortgagee must retain a copy of the Notification of PFS Program Participation Termination in the servicing file.

#### (N) Failure to Complete a PFS Transaction

At the expiration of the PFS marketing period, should the Borrower be unable to complete a PFS transaction, the Mortgagee must re-evaluate available Loss Mitigation Options as follows:

- If the Borrower's financial condition has improved to the point that reinstatement is a viable option, review the Borrower's eligibility for one of the Loss Mitigation Home Retention Options; and
- If reinstatement is not feasible, review the Borrower for a DIL of Foreclosure.

Within 90 Days after the expiration of the PFS marketing period, the Mortgagee must consider and approve the Borrower for an alternate Loss Mitigation Option or complete the first legal action to initiate foreclosure.

Should additional time be needed to complete a DIL or to initiate foreclosure, Mortgagees must submit a request for an extension of time to the NSC via EVARS.

#### (O) Extensions of Foreclosure Time Frame for PFS

##### (1) Standard

After PFS early termination or option failure, HUD provides an automatic 90-Day extension to the [deadline](#) to complete a Loss Mitigation Option or to perform the first legal action initiating foreclosure. The automatic 90-Day extension begins the Day after the PFS ATP is terminated or expires.

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If the Mortgagee has not yet received the Net Sale Proceeds from the Closing Agent and the automatic 90-Day extension is nearing expiration, the Mortgagee must submit a request for extension to the NSC via EVARS.

#### **(2) Required Documentation**

The Mortgagee must note the use of any extensions, whether automatic or requested, on form [HUD-27011](#).

#### **(P) Deficiency Judgments**

If a foreclosure occurs after the Borrower unsuccessfully participated in the PFS process in good faith, neither the Mortgagee nor HUD will pursue the Borrower for a deficiency Judgment.

#### **(Q) PFS Incentive**

The Mortgagee may claim an [incentive](#) for each completed PFS transaction that complies with all HUD PFS requirements.

#### **(R) Mortgage Insurance Termination**

The Mortgagee must not submit a mortgage insurance termination on PFS transactions. HUD can only pay FHA mortgage insurance benefits when the status of the mortgage insurance is “active.”

#### **(S) Reporting of PFS**

The Mortgagee must report in SFDMS the appropriate Claim Termination of Insurance Code to indicate when the PFS has been held.

The Mortgagee must report the PFS Sale to consumer reporting agencies.

### **iii. Deed-in-Lieu of Foreclosure**

#### **(A) Definition**

A Deed-in-Lieu (DIL) of Foreclosure is a Loss Mitigation Home Disposition Option in which a Borrower voluntarily offers the deed as collateral Property to HUD in exchange for a release from all obligations under the Mortgage. There are three types of DIL transactions:

- Streamlined DIL;
- Streamlined DIL for Servicemembers with PCS Orders; and
- Standard DIL.

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#### **(B) Disclosure Requirements for DIL**

Prior to approving a Borrower for a DIL, the Mortgagee must notify the Borrower in writing of the following:

- The Mortgage must be in Default on the date the DIL special warranty deed is executed, pursuant to Section 204 of the National Housing Act (12 U.S.C. 1710).
- DIL transactions are generally reported to consumer reporting agencies, and will likely affect the Borrower's ability to obtain another Mortgage and other types of credit.
- If the Borrower is a servicemember, it is recommended that the Borrower obtain guidance from their employer regarding the DIL's impact on their security clearance and employment.

#### **(C) Eligibility**

##### **(1) Defaulted Mortgage Status**

The Mortgagee must ensure that the Mortgage meets the following eligibility requirements for the DIL Option:

- the Mortgage is in Default and the cause of Default must be incurable; or
- the Borrower is at risk of Imminent Default and the Borrower provides to the Mortgagee documentation that supports their Imminent Default.

##### **(2) Borrower Eligibility**

HUD expects Borrowers to first attempt to market the Property under the PFS Program prior to use of the DIL Option.

##### **(a) Streamlined DIL**

###### **(i) Definition**

A Streamlined Deed-in-Lieu (DIL) is a DIL transaction for Owner-Occupant Borrowers and Non-Occupant Borrowers and does not require verification of hardship.

###### **(ii) Streamlined DIL Standards**

The Mortgagee must ensure that:

- all Borrowers and the Property meet the requirements for a [Streamlined PFS](#); and
- Borrowers have attempted to complete a PFS.



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#### (b) Streamlined DIL for Servicemembers with PCS Orders

##### (i) Definition

A Streamlined DIL for Servicemembers with PCS Orders Option is a Streamlined DIL that may be offered to servicemembers who must relocate to a new duty station at least 50 miles away from their existing residence, without the Mortgagee verifying hardship.

##### (ii) Streamlined DIL for Servicemembers with PCS Orders Standards

The Mortgagee must ensure that:

- Servicemembers and the Property meet the requirements for a [Streamlined PFS for Servicemembers with PCS Orders](#); and
- Servicemembers have attempted to complete a PFS Option.

#### (c) Standard DIL

##### (i) Definition

A Standard DIL is a DIL available for Owner-Occupant Borrowers who experienced a verifiable hardship that has affected their ability to sustain their Mortgage but who do not meet the requirements of a Streamlined DIL Option.

##### (ii) Standard DIL Standard

The Mortgagee must ensure that:

- all Borrowers and the Property meet the requirements for a Standard PFS; and
- Borrowers have attempted to complete a PFS Option.

#### (d) DIL Exceptions for Borrowers with More than One FHA-Insured Mortgage

The Mortgagee must submit a request for NSC approval via EVARS for approval to offer a DIL Option to a Borrower who owns more than one FHA-insured Property.

#### (e) Exceptions for Non-Occupant Borrowers in Standard DIL Transactions

HUD authorizes Mortgagees to offer Standard DIL to Non-Occupant Borrowers when the following can be demonstrated:

- Need to vacate: the non-occupancy was related to the cause of Default; or

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- Not purchased/used as rental: the subject Property was not purchased as a rental or used as a rental for more than 18 months prior to the offering of the DIL Option.

The Mortgagee must submit a variance request to use the DIL Option to NSC via EVARS when the Property is owned by a corporation or partnership.

#### **(3) Condition of Title**

The Borrower or Mortgagee must be able to convey a clear and marketable title to the Secretary. The Mortgagee must obtain a title search or preliminary report and determine whether the title is impaired by:

- unresolvable title problems;
- liens that cannot be discharged as permitted by HUD; or
- a PACE obligation.

#### **(4) Deficiency Judgment**

HUD will not accept a DIL when it has elected to pursue a deficiency Judgment against the Borrower.

#### **(D) DIL Borrower Consideration**

##### **(1) Consideration Amount**

HUD offers Owner-Occupant Borrowers a consideration of up to \$2,000 upon vacating the Property and satisfaction of the requirements of the DIL Agreement. HUD will not pay this consideration if the Property is occupied at conveyance.

##### **(2) Use of Consideration Amount**

The Owner-Occupant Borrower may apply the entire amount of the consideration or a portion of it to resolve liens, including PACE obligation liens.

#### **(E) DIL Agreement**

##### **(1) Standard**

The Borrower and the Mortgagee must execute a DIL Agreement in writing. HUD does not require a specific format for documenting a DIL Agreement. The Mortgagee must ensure that the DIL documentation complies with all applicable laws and regulations.

##### **(2) DIL Agreement Terms**

The Mortgagee must ensure that the DIL Agreement contains the following:

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- certification that the Borrower does not own other Property subject to a Mortgage insured by or held by HUD;
- the Transfer Date;
- notification of possible income tax consequences;
- acknowledgement that Borrowers who comply with all requirements of the Agreement will not be pursued for deficiency Judgments;
- a statement describing the physical condition in which the Property will be conveyed;
- agreement with the Borrower to convey the Property vacant and free of Personal Property, unless HUD has approved an Occupied Conveyance;
- itemization of keys, built-in-fixtures, and equipment to be delivered by the Mortgagee on or before the Transfer Date;
- evidence that utilities, assessments, and HOA dues are paid in full by the Transfer Date, unless otherwise agreed to by all parties; and
- the amount of consideration payable to and/or on behalf of the Borrower will not exceed \$2,000.

#### (3) Required Documentation

The Mortgagee must retain a copy of the executed DIL Agreement in the Claim Review File.

#### (F) DIL Conveyance to HUD

##### (1) Mortgage in Default

The Mortgagee must ensure that the Mortgage is in Default when the DIL is recorded and the Property conveyed to HUD.

##### (2) Discharge of Liens

The Mortgagee must provide for the discharge of liens as follows:

- The Mortgagee must complete a title search and must ensure the secure release of liens and/or endorsements to the title policy are obtained.
- HUD will not accept titles subject to most liens, including IRS and HOA liens. HUD will allow liens securing repayment of Section 235 assistance payments, Partial Claim advances, and Title I liens.
- HUD will allow a notice of lien recorded in the land records securing repayment of a PACE obligation that may only become subject to an enforceable claim (i.e., a lien) for delinquent regularly scheduled PACE special assessment payments and otherwise complies with the eligibility and acceptability criteria for Properties encumbered with a PACE obligation provided in [PACE Obligation Review](#).
- If the Owner-Occupant Borrower receives consideration, this consideration may be applied towards discharging liens.

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#### (3) Special Warranty Deed

The Borrower and the Mortgagee must convey the Property through a special warranty deed and, when possible, the Borrower must convey title directly to HUD. The Mortgagee must cancel and surrender to the Borrower the original credit instrument, indicating that the Mortgage has been satisfied.

If it is necessary to convey title to the Mortgagee, and then to HUD, the Mortgagee must document the reason in the Claim Review File.

#### (4) Conveyance Time Frame

The Mortgagee must record the special warranty deed and deliver the original, recorded deed to HUD's [MCM](#) within 45 Days of the date the clear and marketable title was conveyed to the Secretary.

#### (5) Occupied Properties

The Mortgagee must ensure that the Property is vacant at the time of conveyance.

HUD will not accept a DIL if the collateral Property is occupied at the time of conveyance to HUD, unless authorized for [Occupied Conveyance](#).

#### (6) Option Not to Convey

The Mortgagee may elect not to convey title to HUD and to terminate the contract of mortgage insurance. If this occurs, the Mortgagee must use form HUD-27050-A, *Insurance Termination*, in [FHAC](#) to notify HUD.

#### (G) DIL Incentive

The Mortgagee may submit a claim for an [incentive](#) for each completed DIL transaction that complies with all HUD DIL requirements.

#### (H) DIL Foreclosure Time Frames

The Mortgagee must complete the DIL or initiate foreclosure within six months of the date of Default, unless the Mortgagee qualified for an automatic 90-Day extension by first attempting a Loss Mitigation Option or has received an extension approved by the NSC via EVARS. If the DIL follows a failed SFB-Unemployment Agreement or PFS, the DIL must be completed or foreclosure initiated within 90 Days of the failure.

#### (I) Reporting to Consumer Reporting Agencies and the IRS

The Mortgagee must not report DIL transactions to consumer reporting agencies as foreclosures.

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#### (J) Reporting of DIL

The Mortgagee must report the appropriate Claim Termination of Insurance Code to indicate when the DIL was completed in SFDMS.

#### m. Loss Mitigation Incentives

The Mortgagee may submit a [claim](#) for an incentive for the successful completion of the approved Loss Mitigation Options listed below.

Loss Mitigation Option	Compensation
SFB-Unemployment	\$100 (\$200 for Mortgagees with an “A” Tier 1 score under HUD’s TRS II).
FHA-HAMP	\$500 for an FHA-HAMP Partial Claim. \$750 for an FHA-HAMP Loan Modification, plus up to \$250 for reimbursement of title search, endorsement to the title policy, and/or recording fees actually incurred.
PFS	\$1,000
DIL	\$250

#### n. Non-Monetary Default

By executing the deed of trust and Note for an FHA-insured Mortgage, the Borrower agrees to submit the monthly Mortgage Payment by the first of each month and to adhere to the uniform covenants listed in the deed of trust and Note. The following provides guidance associated with the Borrower’s failure to adhere to these covenants.

##### i. Definition

Non-Monetary Default is when the Borrower fails to perform obligations, other than making monthly payments, contained in the mortgage security instrument for a period of 30 Days.

##### ii. Mortgagee Cure

When the Non-Monetary Default may be cured or otherwise resolved by Mortgagee action without resorting to foreclosure action, the Mortgagee must advance and charge the Borrower all amounts due for servicing activities, as defined in the mortgage agreement, if:

- the Borrower fails to make required payments or charges;
- the Borrower fails to perform any other covenants and agreements contained in the security instrument; or
- there is a legal proceeding that may affect the Mortgagee’s rights in the Property.

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###### iii. Hazard Insurance

If the Borrower fails to maintain hazard insurance coverage when it is stated as an obligation in the Mortgage, the Mortgagee may advance funds or force-place insurance as follows.

###### (A) Mortgagee Advances

The Mortgagee may advance the funds to pay the renewal premiums. The Mortgagee must renew the same type of policy and the same coverage carried previously by the Borrower.

###### (B) Force-Placed Insurance

If Borrowers fail to renew hazard insurance coverage when required, the Mortgagee may force-place hazard and/or flood insurance where consistent with federal regulations. While the Mortgagee may, at its discretion, obtain more coverage than is necessary to protect the Mortgagee's interest, HUD limits its reimbursement of these [premiums](#).

###### iv. Taxes, Assessments and Government or Municipal Charges

The Mortgagee may advance funds and charge the Borrower when the Borrower fails to pay taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions not included in the Borrower's monthly Mortgage Payment.

###### v. Homeowners' Association Fees

If the Borrower fails to pay HOA/Condominium Fees, the Mortgagee must take any action necessary to protect the first lien position of the FHA-insured Mortgage against foreclosure actions brought by a HOA/condominium or any other junior lien holder.

###### vi. Code Violations

If the Borrower fails to address a code violation notice from the municipality where the Property is located, the Mortgagee must perform activities necessary to preserve and protect the Property, as authorized under the security instruments. See [Mortgagee Property Preservation and Protection Action](#).

###### vii. Demolition Orders

The Mortgagee must forward copies of all notices pertaining to demolition orders and hearings to HUD's [MCM](#) immediately upon discovery.

The MCM will advise the Mortgagee as to whether to proceed with the demolition or to postpone the demolition until after conveyance to HUD.

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###### viii. Due-on-Sale Clause

The Mortgagee must review the Mortgage's legal documents to determine any covenant restrictions pertaining to assumption. See [Assumptions](#) for more information.

###### o. Distressed Asset Stabilization Program

###### RESERVED FOR FUTURE USE

This section is reserved for future use, and until such time, FHA-approved Mortgagees and any other interested participants must continue to comply with all applicable law and existing Handbooks, Mortgagee Letters, Notices and outstanding guidance applicable to their participation in FHA programs.

###### p. Claims Without Conveyance of Title [This draft section does not include updates from Mortgagee Letter 2020-21, Enhancements to FHA's Claims Without Conveyance of Title (CWCOT) Procedures]

###### i. Definitions

A Claims Without Conveyance of Title (CWCOT) is a procedure under which the Mortgagee attempts to secure a third party purchaser for the mortgaged Property so that conveyance to HUD is not required in exchange for mortgage insurance benefits.

A Competitive Sale is a CWCOT-related sale where a Mortgagee elects to use an independent third-party provider to conduct the foreclosure sale or in connection with any Post-Foreclosure Sales Efforts and where the Property is marketed for a minimum of 15 Days.

A Non-Competitive Sale is a CWCOT-related sale where a Mortgagee elects not to use an independent third-party provider to conduct the foreclosure sale or in connection with any Post-Foreclosure Sales Efforts and/or the Property is not marketed for a minimum of 15 Days.

###### ii. Qualification Criteria for Use of Commissioner's Adjusted Fair Market Value

###### (A) Definition

The Commissioner's Adjusted Fair Market Value (CAFMV) is the estimate of the FMV of the mortgaged Property, less adjustments, which may include without limitation, HUD's estimate of holding costs and resale costs that would be incurred if title to the mortgaged Property were conveyed to HUD.

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###### (B) Standard

Unless otherwise required by statute or jurisdiction, the Mortgagee must use the CAFMV for all foreclosure sales and Post-Foreclosure Sales Efforts for Mortgages in Default when all the following criteria are met:

- the FHA mortgage insurance is still active for the FHA case number;
- the Mortgagee has worked with the Borrower to exhaust all Home Retention Options and has determined that the Borrower's case does not meet the criteria for a Home Disposition Option, or the Mortgagee has been unable to locate the Borrower, and the Property is vacant or has been abandoned by the Borrower;
- the Property has no Surchargeable Damage; and
- the Mortgagee's projected conveyance claim amount would be equal to or greater than the CAFMV.

###### (C) Small Servicer Exemption

###### (1) Definition

Small Servicers are those Servicers defined in [12 CFR § 1026.41\(e\)\(4\)\(ii\)](#).

###### (2) Standard

HUD permits but does not require the use of CAFMV by small servicers.

### iii. Property Valuation and CAFMV

#### (A) Required Appraisal

Unless otherwise directed by HUD, Mortgagees must first obtain and review for accuracy an "as-is" FHA appraisal, which includes both an interior and exterior evaluation of the Property.

If the Property is occupied and an interior appraisal cannot be obtained, an "exterior-only" appraisal may be used.

##### (1) Appraisal Validity

The appraisal must be valid on the date of the foreclosure sale. Appraisals are valid for 120 Days.

##### (2) Extension to Appraisal Validity Period

HUD provides an automatic 30-Day extension from the appraisal expiration date for delays due to bankruptcy, court delays or delays outside of the Mortgagee's control. The Mortgagee must request and obtain HUD approval via EVARS for extensions beyond the automatic 30-Day extension.



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### (3) Required Analysis and Reporting of a PACE Obligation

The Appraiser must review property tax records for the Property to determine the amount outstanding and the terms of the PACE obligation:

- if the Mortgagee notifies the Appraiser that the subject Property will remain subject to a PACE obligation;
- when the Appraiser observes that the property taxes for the subject Property are higher than average for the neighborhood and type of dwelling; or
- when the Appraiser observes energy-related building components or equipment or is aware of other PACE-allowed improvements during the inspection process.

The Appraiser must report the outstanding amount of the PACE obligation for the subject Property and provide a brief explanation of the terms.

Where energy and other PACE-allowed improvements have been made to the Property through a PACE program, the Appraiser must analyze and report the impact on value of the Property, whether positive or negative, of the PACE-related improvements and any additional obligation (i.e., the PACE special assessment).

### (4) Required Documentation

If the Property is to be conveyed to HUD, the Mortgagee must upload into [P260](#) a copy of the appraisal used to determine CAFMV.

### (B) Determining the CAFMV

After determining the Property's appraised value, the Mortgagee's authorized employees must access the CAFMV link in [FHAC](#) to determine a Property's CAFMV.

The CAFMV remains valid and in effect for 120 Days from the date of the appraisal.

### (C) Damage to the Property after Appraisal

The Mortgagee must request a variance from the NSC via EVARS to proceed with the current appraised value if the Mortgagee becomes aware that the Property sustained significant damage, other than damage resulting from Mortgagor neglect, that may impact the value after the appraisal was completed. If the NSC denies this request, additional instructions will be provided with the denial.

### (D) Updated Appraisals due to Postponed Foreclosure Sales

If the foreclosure sale does not take place within 120 Days from the date of the appraisal, and within such additional time provided under [Extension to Appraisal](#)

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1        [Validity Period](#), the Mortgagee must request an updated appraisal and obtain an  
2        updated CAFMV.

#### 3        **iv. Independent Third-Party Providers**

##### 4        **(A) Definition**

5        An Independent Third-Party Provider is a party that conducts the foreclosure sale or  
6        additional Post-Foreclosure Sales Efforts under CWCOT procedures.

##### 7        **(B) Standard**

8        Mortgagees may utilize an Independent Third-Party Provider to conduct the  
9        foreclosure sale and market a Property (securing an FHA-insured Mortgage) prior to  
10       such sale, where permitted by jurisdiction.

11       The Mortgagee must ensure that the Independent Third-Party Provider is not one of  
12       the following:

- 13       • an Affiliate or subsidiary of the Mortgagee;
- 14       • any Entity over which the Mortgagee has significant influence; or
- 15       • any Entity with which the Mortgagee has a conflict of interest in fact or  
16       appearance.

17       For successful third-party sales, HUD will reimburse Mortgagees for Independent  
18       Third-Party Provider service fees incurred up to an amount that does not exceed 5  
19       percent of the Property's net sales price. Revenue sharing agreements of the  
20       reimbursed fee between the Mortgagee and the Independent Third-Party Provider are  
21       not permitted.

#### 22       **v. CWCOT Bidding Procedures**

23       The Mortgagee must bid the CAFMV [at the foreclosure sale](#).

24       Either the Mortgagee or a third party will be the successful bidder at the foreclosure sale.  
25       Notwithstanding the foreclosure sale, the Borrower or a third party may exercise a legal  
26       right and redeem the Property.

#### 27       **vi. Reporting CWCOT**

28       If a third party purchased the Property at foreclosure through CWCOT procedures, the  
29       Mortgagee must report in SFDMS the appropriate Claim Termination of Insurance Code.

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#### q. Reinstatement

##### i. Standard

The Mortgagee must allow reinstatement of the Mortgage if the Borrower offers, in a lump sum payment, all amounts to bring the account current, including costs incurred by the Mortgagee in instituting foreclosure, except under any of the following circumstances:

- within the two years immediately preceding the initiation of the current foreclosure action, the Mortgagee has accepted reinstatement in a previous foreclosure action;
- reinstatement will preclude foreclosure following a subsequent Default; or
- reinstatement will adversely affect the priority of the mortgage lien.

##### ii. Incurred Costs

###### (A) Property Inspections/Preservation

When a Mortgage in Default is reinstated, the Mortgagee may charge the Borrower the costs of property inspections and/or preservation, so long as the costs are:

- reasonable and customary for those services, as established in the [Mortgagee Property Preservation and Protection Action](#) section; and
- consistent with HUD requirements, state law, and security instruments.

###### (B) Inspection Cost Collected from Borrower

The Mortgagee may collect the cost of the inspections from the Borrower only when:

- the Mortgage was reinstated or paid in full;
- the Mortgagee has performed and properly documented the inspections pursuant to HUD requirements; and
- the cost of each inspection was reasonable and within the cost limitation established by HUD.

The Mortgagee must not collect inspection costs from the Borrower's escrow account or charge for an Occupancy Inspection performed after successful contact with the Borrower or occupant.

###### (C) Attorney's and Trustees' Fees

If the Mortgagee cancels a foreclosure action for a Loss Mitigation Option, a reinstatement, or a payment in full, the Mortgagee may charge the Borrower for attorney's fees as follows:

- The attorney's fees to be paid by the Borrower must be commensurate with the actual work performed to that point.
- The amount charged may not be in excess of the fee that HUD has established as [reasonable and customary](#) for claim purposes.

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##### iii. Reinstatement during CWCOT

If the Mortgagee is using CWCOT procedures and the Borrower reinstates the Mortgage after foreclosure has been instituted, the Mortgagee must:

- cancel the appraisal if the appraisal has not yet been completed; or
- request that the Borrower reimburse the Mortgagee for the cost of the appraisal as part of foreclosure-related expenses, if the appraisal cost was validly incurred.

##### iv. Reporting Reinstatements

When a Delinquent Mortgage is reinstated, the Mortgagee must report the appropriate Account Reinstated Code in SFDMS to indicate whether:

- use of repayment plans or HUD's Loss Mitigation Options assisted in the reinstatement;
- reinstatement was due to a sale of the Property using a mortgage assumption; or
- the Borrower was able to reinstate the Mortgage on their own.

##### r. Foreclosure

When a Borrower with a Mortgage in Default cannot or will not resume and complete their Mortgage Payments, the Mortgagee must take steps to acquire the Property or see that it is acquired by a third party. Before starting foreclosure, the Mortgagee must review its servicing record to be certain that servicing has been performed in accordance with HUD guidance. When foreclosure is appropriate, Mortgagees must initiate and complete foreclosure in a timely manner.

##### i. Mortgagee Action Before Initiation of Foreclosure

The Mortgagee must exercise reasonable diligence in collecting past due Mortgage Payments by:

- utilizing Early Delinquency Servicing Workout tools;
- determining eligibility of HUD's Loss Mitigation Program when appropriate;
- performing the first legal action to initiate foreclosure, to acquire title and possession of the Property, when necessary;
- ensuring that the Mortgage has been accurately reported to consumer reporting agencies in accordance with applicable federal law; and
- ensuring that any former Borrower, co-Borrower and/or co-signer personally liable for payment of the mortgage debt has been notified, as appropriate.

##### (A) Assignments for Special Mortgages

The Mortgagee must not foreclose on Mortgages insured pursuant to Sections 203(q), 247, and 248 of the National Housing Act. The Mortgagee must comply with HUD's [collection communication requirements](#) and may assign the Mortgage to HUD as follows:

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- Section 203(q) Mortgages: may assign the Mortgage to HUD, after the Mortgage has been in Default for 90 Days.
- Section 247 Mortgages: may assign the Mortgage to HUD, after the Mortgage has been in Default for 180 Days.
- Section 248 Mortgages: may assign the Mortgage to HUD, after the Mortgage has been in Default for 90 Days.

#### **(B) Time Frame for Utilization of Loss Mitigation or Initiation of Foreclosure**

The Mortgagee must utilize a Loss Mitigation Option or initiate foreclosure within six months of the date of Default. FHA considers the Mortgagee to have satisfied this requirement if, within the six-month time frame, the Mortgagee takes one or a combination of the following actions:

- enters into an SFB-Unemployment Agreement;
- completes a refinance of an insured cooperative housing Mortgage;
- completes an assumption;
- enters into a TPP Agreement for an FHA-HAMP Option;
- executes a PFS ATP;
- executes a DIL agreement; or
- initiates the first legal action to begin foreclosure.

#### **(C) When to Initiate Foreclosure**

After at least three consecutive full monthly Mortgage Payments are due but unpaid, a Mortgagee may initiate a foreclosure for monetary Default if one of the following conditions is met:

- The Mortgagee has completed its review of the Borrower's loss mitigation request, determined that the Borrower does not qualify for a Loss Mitigation Option, properly notified the Borrower of this decision, and rejected any available appeal by the Borrower;
- The Borrower has failed to perform under a Loss Mitigation Option agreement, and the Mortgagee has determined that the Borrower is ineligible for other Loss Mitigation Options; or
- The Mortgagee has been unable to determine the Borrower's eligibility for any Loss Mitigation Option due to the Borrower not responding to the Mortgagee's efforts to contact the Borrower.

#### **(D) Exceptions to Foreclosure Initiation Time Frame**

##### **(1) Standard**

A Mortgagee may initiate foreclosure on a Delinquent Mortgage if one of the following conditions is met:

- The Mortgagee has determined that the mortgaged Property has been abandoned or has been vacant for more than 60 Days;

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- The Borrower has notified the Mortgagee in writing that they have no intention of fulfilling their obligation under the Mortgage after being clearly advised of the Loss Mitigation Options available for relief, including PFS and DIL;
- The mortgaged Property is not the Borrower'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; or
- The Property is owned by a corporation or partnership.

##### **(a) Vacant or Abandoned Properties**

If the Mortgage is in Default, the Mortgagee must commence foreclosure:

- no later than six months after the date of Default; or
- no later than 120 Days after the latter of the date that:
  - the Property becomes vacant;
  - the Property is discovered or should have been discovered vacant or abandoned; or
  - for Properties that have two, three, or four units, all units are discovered or should have been discovered vacant or abandoned.

##### **(b) Prohibition of Foreclosure due to State Legislation**

In some states, the Mortgagee must delay, cancel, and/or reschedule a foreclosure action to comply with state law requirements. HUD provides an automatic 90-Day extension after the expiration of the time during which foreclosure is prohibited to commence, where:

- the foreclosure sale would have been conducted in the required time frame but was canceled to comply with state law; and
- the initial legal action to commence foreclosure was timely.

##### **(c) Prohibition of Foreclosure due to Federal Law or Regulations**

Where a federal regulation requires a delay in the initiation of foreclosure, the Mortgagee must initiate foreclosure no later than 90 Days after the expiration of the time during which foreclosure is prohibited. The status of the Defaulted Mortgage should be reported in SFDMS using the established [Delinquency/Default Reason \(DDR\) Code](#) for federally mandated delay.

##### **(d) Prohibition of Foreclosure due to Bankruptcy**

If federal bankruptcy does not permit commencement of foreclosure within the standard six-month time frame, or requires foreclosure to be discontinued, the Mortgagee must commence or, if applicable, recommence foreclosure within 90 Days after the applicable release of stay or bankruptcy discharge date.

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#### **(e) Prohibition of Foreclosure due to Servicemembers Civil Relief Act**

Mortgagees are allowed an automatic 90-Day extension from the date the applicable SCRA foreclosure moratorium expires.

#### **(f) Moratorium on Foreclosure due to Disaster**

Mortgages secured by Properties in Presidentially-Declared Major Disaster Areas (PMDA) are subject to a 90-Day moratorium on the initiation of foreclosures and foreclosures already in process following the disaster. See [Presidentially-Declared Major Disaster Areas](#).

HUD provides the Mortgagee an automatic 90-Day extension from the date of the moratorium expiration date to commence or recommence foreclosure action or evaluate the Borrower under HUD's Loss Mitigation for Borrowers in [Presidentially-Declared Major Disaster Areas](#).

#### **(2) Automatic Extensions for Foreclosure Initiation Time Frame for Loss Mitigation Option**

HUD provides automatic 90-Day extensions to the deadline to complete a Loss Mitigation Option or to perform the first legal action initiating foreclosure, provided the Mortgagee has:

- evaluated and approved the Borrower for a Loss Mitigation Home Retention Option prior to the expiration of the initial six-month period to initiate foreclosure, or issued an ATP in the PFS Program resulting in early termination or option failure;
- reported the Loss Mitigation Option via SFDMS; and
- initiated foreclosure action after reviewing the Borrower for other Loss Mitigation Options from the date the Borrower defaulted under a Loss Mitigation Option or a TPP Agreement failed.

Mortgagees may use these automatic extensions as outlined in [Automatic Extensions to HUD's Initiation of Foreclosure Timeline](#).

HUD does not provide automatic extensions for completion of a DIL; the Mortgagee must submit a request for extension of time for completion of a DIL to the NSC for HUD approval via EVARS. HUD does not provide automatic extensions for attempting a repayment plan, Formal Forbearance Plan, Informal Forbearance Plan, Delinquent refinance, or assumption.

#### **(3) Loss Mitigation Denial**

HUD provides an automatic 90-Day extension to the initiation of foreclosure timeline in any case in which the Mortgagee needs additional time to comply with the appeals process required by the Consumer Financial Protection Bureau



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(CFPB) Loss Mitigation regulations under RESPA (Regulation X) at [12 CFR § 1024.41](#).

The 90-Day extension begins on the date the Mortgagee denies loss mitigation and sends the Borrower the notice required under CFPB regulations.

#### **(4) Requests for Other or Additional Extensions to the Time Requirement to Utilize Loss Mitigation Option**

For additional time extensions, and for extensions of time for any other reason not listed above, the Mortgagee must request the extension via EVARS prior to the expiration of the existing time frame and provide:

- the dates required notices were sent to the Borrower;
- the date the Mortgagee received the Complete Loss Mitigation Request;
- the date the Mortgagee approved or denied the Borrower for Loss Mitigation Options; and
- a clear explanation of the Mortgagee's need for an extension to this deadline.

#### **(5) Required Documentation**

The Mortgagee must retain documentation of form [HUD-50012](#), *Mortgagee's Request for Extensions of Time*, in the Claim Review File and must ensure that all extensions of time to initiate foreclosure are reflected in its claim submission.

For all extensions of time requests, the Mortgagee must:

- note the reason for the extension and relevant dates that necessitated the extension and retain documentation supporting the reason and dates in the Claim Review File;
- report the applicable status codes in [SFDMS](#); and
- report on form [HUD-27011](#), Part A:
  - the dates relating to the extension;
  - in Block 19, the Expiration Date of the 90-day extension being used;
  - in the "Mortgagee's Comments" section, the extension being used and the reason(s) for the extension; and
  - in the "Mortgagee's Comments" section, the statement, "I certify that the use of this extension is for the reason(s) stated above."

#### **(E) Curtailment of Claims**

Mortgagees are responsible for [self-curtailement](#) of interest and property expenses on Single Family claims when Reasonable Diligence Time Frames or reporting requirements are not met. Property expenses do not include real estate taxes and hazard insurance premiums.



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#### (F) Management Review

Prior to the initiation of foreclosure the Mortgagee must:

- develop a form or checklist to document that they have reviewed the Mortgage for foreclosure. A supervisor higher than the person submitting the Mortgage for foreclosure must sign or electronically acknowledge that they have reviewed and approve the document evidencing the decision to foreclose;
- ensure the Mortgage Holder approves of the Mortgagee's decision to foreclose, or has the delegated authority to make such decisions; and
- continue to service the Mortgage throughout foreclosure proceedings and to work with the Borrower to avoid foreclosure pursuant to the [Loss Mitigation During the Foreclosure Process](#) section requirements and program requirements related to changes in the Borrower's financial circumstances.

#### (G) Manufactured Housing Review

Due to the [title evidence requirements](#) for Manufactured Housing, the Mortgagee must:

- review each Property at the time of foreclosure referral to determine if the collateral for the FHA-insured Mortgage is a Manufactured Home; and
- ensure that all the [Title Evidence for Manufactured Housing](#) requirements are met before conveying a Manufactured Home to HUD.

#### (H) PACE Obligation Review

The Mortgagee must:

- review each Property at the time of foreclosure referral to determine if the Property is encumbered with a PACE obligation;
- confirm that any identified PACE obligation may only become subject to an enforceable claim (i.e., a lien) for delinquent, regularly scheduled PACE special assessment payments, and otherwise complies with the following eligibility and acceptability criteria for Properties with a PACE obligation:
  - FHA case number must have been assigned prior to January 7, 2018;
  - under the laws of the state where the Property is located, the PACE obligation is collected and secured by the creditor in the same manner as special assessment taxes against the Property;
  - the Property may only become subject to an enforceable claim (i.e., lien) that is superior to the FHA-insured Mortgage for delinquent regularly scheduled PACE special assessment payments. The Property shall not be subject to an enforceable claim (i.e., lien) superior to the FHA-insured Mortgage for the full outstanding PACE obligation at any time (i.e., through acceleration of the full obligation). However, a notice of the lien for the full PACE obligation may be recorded in the land records;
  - there are no terms or conditions that limit the transfer of the Property to a new homeowner. Legal restrictions on conveyance arising from a PACE

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obligation that could require consent of a third party before the owner can convey the Real Property are prohibited, unless such provisions may be terminated at the option of, and with no cost to, the homeowner;

- the existence of a PACE obligation on a Property is readily apparent to Mortgagees, Appraisers, Borrowers and other parties to an FHA-insured Mortgage transaction in the public records and must show the obligation amount, the expiration date and cause of the expiration of the assessment. In no case may default accelerate the expiration date; and
- in the event of a sale, including a foreclosure sale, of the Property with outstanding PACE financing, the obligation continues with the Property, causing the new homeowner to be responsible for the payments on the outstanding PACE amount; and
- contact the HUD NSC for guidance if a noncompliant PACE obligation is identified.

#### ii. Conduct of Foreclosure Proceedings

When foreclosure is necessary, the Mortgagee must give timely notice to HUD via SFDMS and exercise reasonable diligence in processing and completing foreclosure proceedings to acquire good marketable title and possession of the Property. HUD expects Mortgagees to comply with all federal, state, and local laws when prosecuting a foreclosure and pursuing a possessory action.

#### (A) Initiating Foreclosure

##### (1) First Legal Action to Initiate Foreclosure

The Mortgagee must perform the first legal action to initiate foreclosure for each state as provided in [Appendix 5.0 – First Legal Actions to Initiate Foreclosure and Reasonable Diligence Time Frames](#).

##### (2) Notice to HUD of Foreclosure Initiation

The Mortgagee must give notice to HUD within 30 Days of initiating foreclosure by reporting the foreclosure status in the monthly SFDMS report.

The Mortgagee must report the foreclosure status for the current cycle or following cycle in which the first required public legal action is taken to initiate foreclosure.

##### (3) Notice to HOA or Condominium Associations

As part of the foreclosure proceedings, the Mortgagee must notify and serve all Interested Parties of the pending foreclosure, pursuant to state law. Unless otherwise specified by state law, Interested Parties include all condominium management companies and HOAs that are reflected in the mortgage/origination documents, recorded covenants/declarations, initial foreclosure referral and/or

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title search review, or made known to the Mortgagee during the foreclosure proceedings.

#### **(4) Outstanding HOA or Condominium Association Fees**

Unless prohibited by state law, the Mortgagee must ensure that outstanding HOA/Condominium Fees are included as part of the foreclosure proceeding.

#### **(B) SCRA Protection during Foreclosure**

The Mortgagee must obtain court permission before foreclosing on a Mortgage falling under provisions of the SCRA. A foreclosure sale or Manufactured Housing repossession during the period of military service and subsequent periods specified within the SCRA is invalid unless it is:

- made pursuant to a court order granted before such sale with a return made and approved by the court; or
- held pursuant to a written agreement, entered after the commencement of Active Duty, between the parties involved.

#### **(C) Loss Mitigation During the Foreclosure Process**

The Mortgagee may evaluate the Borrower for a Loss Mitigation Option during the foreclosure process where:

- the Borrower submits their initial Complete Loss Mitigation Request; or
- the Mortgagee has determined that the Borrower was ineligible for loss mitigation based on a Complete Loss Mitigation Request; and a change in circumstances has occurred so that a Borrower may be eligible for a subsequent loss mitigation review.

#### **(1) Requests Received during Foreclosure**

The following describes Mortgagee action regarding foreclosure proceedings and loss mitigation requests, depending on when the request is received by the Mortgagee.

##### **(a) 45 or More Days to Scheduled Foreclosure Sale Date**

##### **(i) Response**

When the loss mitigation request is received 45 Days or more prior to the scheduled foreclosure sale date, the Mortgagee must notify the Borrower in writing within five business days of receiving the request that:

- the Borrower's request has been received; and
- the request is complete or incomplete.

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###### **(ii) Review**

Within 30 Days of receiving a Complete Loss Mitigation Request, the Mortgagee must:

- review a Borrower's request for eligibility for all Loss Mitigation Options; and
- provide the Borrower with a notice in writing stating the Mortgagee's determination of which Loss Mitigation Option, if any, it will offer to the Borrower.

###### **(iii) Foreclosure Action**

A Mortgagee must not move forward with a scheduled foreclosure sale during its loss mitigation review.

##### **(b) More than 37 Days but Less than 45 Days to Scheduled Foreclosure Sale Date**

###### **(i) Review**

Within 30 Days of receiving a Complete Loss Mitigation Request, the Mortgagee must review a Borrower's request for eligibility for Loss Mitigation Options when received more than 37 Days but less than 45 Days to the scheduled foreclosure sale date.

If an incomplete request is received and is not completed despite the Mortgagee's repeated requests to the Borrower for information, the Mortgagee may, at its discretion, evaluate an incomplete loss mitigation request and offer a proprietary, non-incentivized Loss Mitigation Option.

###### **(ii) Foreclosure Action**

The Mortgagee must not move forward with a scheduled foreclosure sale during its loss mitigation review.

##### **(c) 37 or Fewer Days Prior to the Scheduled Foreclosure Sale Date**

###### **(i) Review**

A Mortgagee must use its best efforts to complete a thorough and accurate review when the Borrower's request is received 37 Days or fewer, prior to the scheduled foreclosure sale date.

###### **(ii) Foreclosure Action**

HUD does not require the Mortgagee to suspend the foreclosure sale. The Mortgagee may proceed with a foreclosure sale if the Mortgagee:

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- determines after its review of available information that a Borrower is ineligible for loss mitigation; or
- using its best efforts, is still unable to complete a thorough and accurate review of a Borrower's request by the scheduled foreclosure sale date.

#### **(2) Terminating Foreclosure Proceedings for Loss Mitigation**

When a Borrower requests loss mitigation assistance after the Mortgagee has initiated foreclosure, the Mortgagee must suspend and/or terminate the foreclosure proceedings, depending on the state law requirement, after the Mortgagee has:

- verified that a Borrower's financial situation qualifies them for a Loss Mitigation Option;
- allowed the Borrower at least 14 Days to consider the Mortgagee's offer of loss mitigation assistance, if the request for loss mitigation was received more than 37 Days prior to the scheduled foreclosure sale date; and
- received an executed Loss Mitigation Option Agreement or sales contract from the Borrower with:
  - an SFB Agreement executed by the Borrower, indicating the Borrower understands and agrees to the Option terms;
  - an acceptable executed sales contract for a Borrower approved to participate in the PFS Program; or
  - an executed DIL Agreement that acknowledges the Borrower understands and agrees to the Option terms.

If state law requires the Mortgagee to cancel a foreclosure action and then requires the Mortgagee to re-initiate the action at a later date, if needed, the Mortgagee must request an approval from the NSC via EVARS for an extension of time to the First Legal Deadline prior to approving the Borrower for Loss Mitigation.

#### **(3) Communication Between Departments**

The Mortgagee must ensure that strong communication lines are established between the Loss Mitigation and Foreclosure departments to facilitate the coordination of loss mitigation efforts and the sharing of documentation and information relating to a Borrower's delinquency. Both departments must be aware of when a Borrower's file is under review for HUD's Loss Mitigation Program.

#### **(D) Borrower Sale of the Property before Foreclosure Sale**

HUD encourages the Mortgagee, when possible, to provide the Borrower with an opportunity to sell the Property and to provide a reasonable time to complete the sale. The Mortgagee should not initiate foreclosure if it appears that a sale is probable and

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should accept payments tendered while the Property is for sale and before foreclosure is started.

#### **(E) Reasonable Diligence in Completing Foreclosure**

##### **(1) Definition**

The Reasonable Diligence Time Frame is the time period beginning with the first legal action required by the jurisdiction to commence foreclosure and ending with the later date of acquiring good marketable title to, and possession of, the Property.

##### **(2) Standard**

The Mortgagee must exercise reasonable diligence in processing foreclosures and in acquiring title to and possession of Properties, in accordance with HUD's [Reasonable Diligence Time Frames](#).

When circumstances beyond the Mortgagee's control occur, the Mortgagee may treat delays in completing the foreclosure process as exceptions to the Reasonable Diligence Time Frames and may exclude such delays when calculating the time to complete a foreclosure if an extension has been granted by HUD.

##### **(a) Delay Due to Use of Loss Mitigation Home Retention Option**

When determining compliance with the Reasonable Diligence Time Frame, the Mortgagee may exclude the time that the Borrower was performing under an SFB-Unemployment Agreement or TPP.

##### **(b) Delay Due to Foreclosure Mediation**

Where mediation is required after the initiation of foreclosure but before the foreclosure sale, the Mortgagee may exclude the time required to complete the mediation when determining compliance with the Reasonable Diligence Time Frame.

##### **(c) Delay Due to Active Duty Military Service**

If a Borrower is on Active Duty military service and the Mortgage was obtained prior to entry into Active Duty military service, the Mortgagee may exclude the period during which the Borrower is on Active Duty military service when computing the Reasonable Diligence Time Frame.

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#### **(d) Delay Due to Bankruptcy**

When a Borrower files bankruptcy after foreclosure proceedings have been initiated, an automatic 90-Day extension for foreclosure and acquisition of the Property will be allowed if:

- the Mortgagee ensures that all necessary bankruptcy-related legal actions are handled in a timely and effective matter;
- the case is promptly referred to a bankruptcy attorney after the bankruptcy is filed; and
- the Mortgagee monitors the action to ensure that the case is timely resolved through dismissal, termination of the automatic stay, or trustee abandonment of all interest in the secured Property.

HUD will reimburse legal expenses related to resolving bankruptcies in accordance with the [Allowable Foreclosure and Bankruptcy Attorney Fees](#).

The time frame for completing the bankruptcy action will vary based on the chapter under which the bankruptcy is filed.

#### **(i) Chapter 7 Bankruptcy**

HUD allows the Mortgagee an additional 90-Day from the date of the release of stay of the Chapter 7 bankruptcy to commence or recommence the foreclosure.

#### **(ii) Chapter 11, 12 or 13 Bankruptcy**

When the Mortgagee cannot proceed with foreclosure action because of a Chapter 13 (or Chapter 11 or 12) bankruptcy, the Mortgagee must closely monitor the payments required by the bankruptcy court. If the Borrower becomes 60 Days delinquent in payments required under a Chapter 13 (or Chapter 11 or 12) plan, the Mortgagee must ensure that prompt legal action is taken to resolve the matter.

Any delay the Mortgagee encounters must be fully documented and must be beyond the Mortgagee's control.

#### **(e) Delay in Acquiring Possession**

When a separate legal action is necessary to gain possession following foreclosure, an automatic 90-Day extension of the Reasonable Diligence Time Frame will be allowed for the actual time necessary to complete the possessory action.

HUD provides this automatic 90-Day extension if the Mortgagee takes the first public legal action to initiate the eviction or possessory action within 30 Days of:

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- the completion of foreclosure proceedings; or
- the expiration of federal or local restrictions on eviction.

The additional time needed under applicable federal, state, or local laws to obtain possession of a Property is taken into consideration when evaluating a Mortgagee's compliance with HUD's Reasonable Diligence Time Frame. Upon the expiration period associated with the applicable occupancy rights, Mortgagees are expected to proceed promptly with possessory actions.

#### **(3) Required Documentation**

The Mortgagee must document in its Claim Review File any delay in completing foreclosure and all activities performed by the Mortgagee to mitigate and abide by these time frames. The Mortgagee must maintain a comprehensive audit trail and chronology to support any delay in compliance with the Reasonable Diligence Time Frames.

Where the Mortgagee has submitted a request for an extension of time to the NSC via EVARS, the Mortgagee must maintain a copy of the NSC's written response in the Claim Review File.

For automatic extensions, the Mortgagee must reflect these extensions in form HUD-27011 and retain in the Claim Review File documentation supporting those extensions.

#### **(F) Allowable Foreclosure and Bankruptcy Attorney Fees**

##### **(1) Definition**

The [Fannie Mae Allowable Foreclosure Attorney Fees and Allowable Bankruptcy Attorney Fees Exhibits](#) provide HUD's maximum fee amount that may be reimbursed in an FHA insurance claim for a foreclosure attorney, bankruptcy clearance, possessory action, and completion of a DIL.

Fannie Mae revises these Exhibits frequently, so Mortgagees must ensure the appropriate version is used. HUD reserves the right to revise amounts which it considers reasonable and customary at any time.

##### **(2) Standard**

HUD will reimburse the Mortgagee for reasonable and customary fees paid to attorneys and trustees in connection with the foreclosure of a mortgage or other acquisition of title. For routine legal actions, HUD reimburses Mortgagees for attorney fees based on the Fannie Mae Allowable Foreclosure Attorney Fees Exhibit and Fannie Mae's Allowable Bankruptcy Attorney Fees Exhibit in the Fannie Mae Servicing Guide Exhibits & Resources. The amount claimed for attorney fees cannot exceed the fees charged for work performed.



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The Fannie Mae Allowable Foreclosure Attorney Fees and Allowable Bankruptcy Attorney Fees Exhibits do not reflect additional expenses incurred due to foreclosure and/or mediation because of the wide differences in costs and lengths of time of foreclosure completion, depending on the jurisdiction in which the foreclosure actions are occurring. The Mortgagee may claim any additional expenses incurred due to required legal actions, such as mediation or probate proceedings, by submitting a documented cost breakdown that must be retained in the Claim Review File with written justification for those costs.

If a Mortgagee suspends or cancels a foreclosure action to perform Loss Mitigation, or if the Mortgage is reinstated or paid-in-full, the Mortgagee may only charge the Mortgagor for attorney fees incurred for the work performed up to the point of the cessation.

Mortgagees may claim no more than 75 percent of the maximum attorney fee for fees incurred for a routine foreclosure that was not completed because any of the following occurred after the Mortgagee initiated foreclosure:

- the Borrower filed a bankruptcy petition;
- the Borrower successfully completed a PFS; or
- the Borrower executed a DIL.

#### **(3) Required Documentation**

Mortgagees are expected to maintain adequate documentation in the Claim Review file to support all attorney and bankruptcy fees.

#### **(G)CWCOT Bidding at the Foreclosure Sale [This draft section does not include updates from Mortgagee Letter 2020-21, Enhancements to FHA's Claims Without Conveyance of Title (CWCOT) Procedures]**

##### **(1) Mortgagee as Successful Bidder**

###### **(a) Amount Equal to the CAFMV**

If the Mortgagee is the successful bidder for an amount equal to the CAFMV, the Mortgagee may elect to either:

- retain title to the Property and file a claim for insurance benefits under CWCOT; or
- convey the title to the Property to HUD and its claim for insurance benefits as a conveyance claim.

###### **(b) Amount Greater than CAFMV**

Where the Mortgagee is the successful bidder for an amount greater than the CAFMV, unless the sheriff or other appropriate local authority has mandated the subject bid at the minimum bid that could be set for the Property, the

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Mortgagee is deemed to have elected to retain title of the Property and therefore must not convey title to the Property to HUD.

#### **(2) Third Party as Successful Bidder**

##### **(a) Amount Equal to or Greater than CAFMV**

Where a third party is the successful bidder at the foreclosure sale for an amount equal to or greater than the CAFMV, the Mortgagee must submit its claim for insurance benefits under CWCOT.

##### **(b) Amount Less than CAFMV**

Where a third party is the successful bidder at the foreclosure sale for an amount less than the CAFMV, the Mortgagee may not file a claim for any insurance benefits.

#### **(3) Borrower or Third Party Redemption**

Where the Borrower or a third party redeems the Property and acquires title for an amount not less than the CAFMV, the Mortgagee must submit its claim for insurance benefits under CWCOT.

#### **(H) CWCOT Post-Foreclosure Sales Efforts [This draft section does not include updates from Mortgagee Letter 2020-21, Enhancements to FHA's Claims Without Conveyance of Title (CWCOT) Procedures]**

If the Property does not sell to a third party at the foreclosure sale, the Mortgagee may pursue additional sales efforts and may utilize independent third-party providers to conduct such sales, concurrently with processes for conveyance of the Property to HUD.

The Mortgagee must still comply with HUD's conveyance time frames, unless a sales contract has been ratified. Where a sales contract has been ratified, HUD provides Mortgagees with an automatic 30-Day extension from the deadline for conveyance.

#### **(I) Electronic Record Retention of Foreclosure-Related Documents**

The Mortgagee must retain documents relating to loss mitigation review in electronic format, in addition to requirements for retaining hard copies or originals of foreclosure-related documents, for foreclosures occurring on or after October 1, 2014. These documents include, but are not limited to:

- evidence of the Mortgagee's foreclosure committee recommendation;
- the Mortgagee's Referral Notice to a foreclosure attorney, if applicable; and
- a copy of the document evidencing the first legal action necessary to initiate foreclosure and all supporting documentation.

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#### **(J) Foreclosure Reporting**

The Mortgagee must report the Account in Foreclosure (AF) Codes that accurately reflect the current stage of foreclosure in SFDMS.

#### **s. Acquiring Possession**

On the date the deed is filed for recording, the Mortgagee must certify that the Property is vacant and free of Personal Property, unless HUD has agreed to accept title with the Property occupied. This, and the procedures described below, applies whether title is acquired by foreclosure or by DIL of Foreclosure.

#### **i. Applicable Law Protecting Tenants**

When determining compliance with the Reasonable Diligence Time Frame, the Mortgagee may exclude the time required to comply with federal, state, and local laws extending the time required to complete possessory actions.

#### **ii. Identification of Property Occupants**

Before completion of foreclosure the Mortgagee must:

- confirm the identity of all occupants;
- determine each occupant's possible rights for continued occupancy under HUD's Occupied Conveyance procedures; and
- follow HUD's Occupied Conveyance procedures by sending occupants the Notice to Occupant of Pending Acquisition (NOPA) 60 to 90 Days before the Mortgagee expects to acquire title.

#### **iii. Notice to Occupant of Pending Acquisition**

##### **(A) Definition**

The Notice to Occupant of Pending Acquisition (NOPA) is a notice to the Borrower and heads of household that the Mortgagee will be acquiring title to the Property and then conveying Property to HUD.

##### **(B) Standard**

At least 60 Days but not more than 90 Days before the Mortgagee reasonably expects to acquire title, the Mortgagee must notify the Borrower and each head of household occupying a unit of the Property of the possibility that the Mortgagee will convey the Property to HUD following foreclosure.

In the event the foreclosure sale is postponed, the NOPA is valid up to 120 Days from the date it was originally mailed.

The [NOPA](#) must:

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- provide a summary of the conditions under which continued occupancy is permissible;
- advise the Borrower:
  - potential acquisition of the Property by HUD is pending ;
  - HUD requires Properties be vacant at the time of conveyance to HUD, unless the Borrower or other occupant can meet the regulatory conditions for continued occupancy, the habitability criteria, and the eligibility criteria;
  - of the process for requesting to remain in the Property; and
  - the Property must otherwise be vacated before the scheduled time of acquisition; and
- be sent via certified mail or with a signature confirmation service to ensure receipt of the notice by all required occupants.

#### (C) Required Documentation

The Mortgagee must provide to HUD's [MCM](#) by uploading into [P260](#):

- an electronic copy of each NOPA; and
- all documentation and information obtained regarding existing leases and tenancies.

#### iv. Occupied Conveyance Requests to HUD

##### (A) Definition

An Occupied Conveyance is the conveyance to HUD of a Property that is not vacant.

##### (B) Standard

HUD notifies the Mortgagee if it has received an occupant's request to remain in the Property. If the Mortgagee has not received such notification from HUD within 45 Days after sending the notice, the Mortgagee must convey the Property as vacant, unless otherwise directed by the [MCM](#).

##### (C) Approved Occupied Conveyance Requests

If HUD grants Occupied Conveyance, the Mortgagee must convey the Property occupied under HUD's Occupied Conveyance regulations and procedures provided by the MCM per [24 CFR § 203.670](#).

##### (D) Denied Occupied Conveyance Requests

If HUD denies Occupied Conveyance, the Mortgagee must determine if there is occupancy protection under federal, state, or local law that would require the Mortgagee to delay possessory action. If the Mortgagee determines that such laws are applicable, the Mortgagee must:

- follow those requirements before evicting the occupant; and

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- attempt to obtain documentation of existing leases and tenancies for the Claim Review File as evidence of the applicability of the occupancy protection laws and the additional time needed to comply with them.

#### v. Rents under Bona Fide Leases

The Mortgagee must attempt to:

- collect rents payable under bona fide leases and tenancies providing post-foreclosure occupancy rights; and
- in the event of default, take possessory action pursuant to the rental contract terms and applicable law.

The Mortgagee must reflect any rents it received during the term of the bona fide lease or tenancy on its [claim](#) for mortgage insurance benefits.

#### vi. Preservation and Protection Costs due to Extended Lease or Tenancy

The Mortgagee may request reimbursement of [additional routine P&P costs](#), including lawn maintenance and inspections that are incurred as a result of an extended lease or tenancy under applicable law.

#### vii. Cash for Keys Consideration

##### (A) Definition

Cash for Keys is a monetary incentive offered to occupants for vacating the property as an alternative to legal eviction after foreclosure.

##### (B) Standard

If property occupants fail to vacate the Property after receiving the first Notice to Quit, the Mortgagee may offer up to \$3,000 per dwelling in exchange for the occupants vacating the property within 30 Days of the Cash for Keys offer. Before releasing the funds, the Mortgagee must inspect the Property to ensure that:

- the Property is in Broom-swept Condition; and
- all built-in appliances and fixtures remain in the Property.

##### (C) Required Documentation

The Mortgagee must document in its Claim Review File the date and amount of the Cash for Keys offer, the date of the actual vacancy, and the date the occupant received the funds.

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#### viii. Evictions and Eviction Personnel

##### (A) Standard

The Mortgagee must ensure that evictions are conducted in accordance with state and local law and send:

- no more than four people for a townhouse or condominium to complete the eviction; and
- no more than six people for a Single Family detached dwelling to complete the eviction.

##### (B) Required Documentation

The Mortgagee must include in the Claim Review File:

- photographs showing that all Personal Property and debris have been removed from the Property as part of the eviction;
- the number of people required and present to complete the eviction;
- whether the eviction was canceled or re-scheduled; and
- documentation supporting eviction costs, including costs due to state or local law requirements for eviction time frame, removal, or storage.

#### t. Conveyance of Acquired Properties

##### i. HUD Contact

##### (A) Mortgagee Compliance Manager

HUD's [MCM](#) is the single point of contact to administer Mortgagee compliance functions and property preservation activities.

##### (B) P260

[P260](#) is HUD's web-based internet portal, which allows Mortgagees to submit requests, notifications, and documents and obtain approvals for pre- and post-conveyance activities.

##### ii. Conveyance Time Frame

The Mortgagee must acquire clear, marketable title and transfer the Property to HUD within 30 Days of the latter of:

- recordation of the foreclosure deed;
- recordation date of a DIL of Foreclosure;
- acquisition of the Property;
- expiration of the redemption period; or
- HUD-approved extensions of time.

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1 In cases where the Mortgagee arranges for a direct conveyance of the Property to the  
2 Secretary, the Mortgagee must convey the Property to HUD within 30 Days of the end of  
3 the Reasonable Diligence Time Frame.

#### 4 **iii. Condition of Properties**

##### 5 **(A) Acceptable Conveyance Condition**

###### 6 **(1) Definitions**

7 Acceptable Conveyance Condition refers to the required condition of a property at  
8 the time of conveyance to HUD.

9 Broom-swept Condition refers to the condition of a Property that is, at a  
10 minimum, reasonably free of dust and dirt and free of hazardous materials or  
11 conditions, personal property, and interior and exterior debris.

###### 12 **(2) Standard**

13 At the time of conveyance to HUD, the Mortgagee must ensure that the Property  
14 meets all Acceptable Conveyance Conditions as follows:

- 15 • The Property is undamaged by fire, flood, earthquake, hurricane, tornado,  
16 boiler explosion (if a condominium), or Mortgagee Neglect.
- 17 • The Property is secured and, if applicable, winterized.
- 18 • All [insured damages including theft and vandalism](#), if any, are repaired per  
19 the scope of work indicated on the insurance documents.
- 20 • Interior and exterior debris is removed, with the Property's interior  
21 maintained in Broom-swept Condition, the lawn is maintained, and all  
22 vehicles and any other personal property are removed in accordance with  
23 state and local requirements.
- 24 • The Mortgagee has good and marketable title.

##### 25 **(B) Mortgagee Property Preservation and Protection Action**

###### 26 **(1) Definitions**

27 Property Preservation and Protection (P&P) actions are maintenance, security,  
28 and repair work required by HUD in order to ensure that the Property meets  
29 HUD's conveyance condition standards.

30 Mortgagee Neglect refers to the Mortgagee's failure to take action to preserve and  
31 protect the Property from the time it is determined (or should have been  
32 determined) to be vacant or abandoned, until the time it is conveyed to HUD.

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### (2) Standard

The Mortgagee must preserve and protect Properties that are the security for FHA-insured Mortgages that are in Default or presently in foreclosure. The Mortgagee is responsible for the management, scheduling, and execution of all activities and actions taken to preserve, secure, maintain and protect the Property, regardless of the amount that HUD may reimburse.

Mortgagees may use any qualified individual or business to perform P&P services on Properties that were secured by FHA-insured Mortgages; however, the Mortgagee remains fully responsible to HUD for its actions and the actions of its agents, individuals, and firms that performed such services.

The Mortgagee remains responsible for property damage or destruction to vacant or abandoned Property resulting from Mortgagee Neglect. Such neglect includes, but is not limited to:

- failure to adequately and accurately verify the occupancy status of a Property;
- failure to complete timely and accurate property inspections;
- failure to promptly and appropriately secure and continue to preserve and protect all vacant Properties according to HUD standards; and
- failure to promptly notify the [MCM](#) of receipt of code violations and demolition notices and/or take appropriate action.

To ensure that the Mortgagee is not held liable for damage or delayed maintenance to the Property by the Borrower, their heirs, successors, or assigns, the Mortgagee must document and photograph any damage resulting from the Borrower that is identified during the [First-Time Vacant \(FTV\) Property Inspection](#).

### (3) Photograph Requirements

The Mortgagee must use digital photography to document:

- the condition of the Property at the FTV Property Inspection and any damage identified; and
- the before and after conditions of the Property when performing Property P&P actions.

The Mortgagee must ensure a date stamp is printed within each photograph and is labeled accordingly with a description of the contents of the photograph.

### (4) Required Documentation

The Mortgagee must:

- take before and after photographs and upload them into [P260](#) for each claimed Property P&P expense;



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- document and photograph any damage resulting from the Borrower that is identified using the FTV inspection; and
- retain in the Claim Review File:
  - all copies of paid invoices or receipts or other documentation supporting all property preservation expenses claimed by the Mortgagee; and
  - a chronology of the Mortgagee's Property P&P actions.

If documentation is incomplete, inadequate, or not provided, HUD will not accept a Mortgagee's certification of property condition and may:

- re-convey the Property to the Mortgagee; or
- seek reimbursement from the Mortgagee for HUD's estimate of the cost of the repairs required to repair and restore the Property to conveyance condition.

HUD requires repayment of all or part of any claim reimbursement if it is determined that expenses claimed and paid were unnecessary or excessive, or that services claimed were not performed or were performed improperly or incompletely. The mortgagee will not be reimbursed for the costs of protecting, operating, or preserving the property, or removing debris from the property after the time the property should have been conveyed to HUD ([24 CFR § 203.402\(g\)](#)).

#### (5) Property Preservation Allowances

##### (a) Definition

The Maximum Property Preservation Allowance is a pre-approved reimbursement for the aggregate of all property preservation expenses that do not exceed the line item allowances listed in HUD's [Property Preservation Allowances and Schedules](#).

##### (b) Standard

The Maximum Property Preservation Allowance is \$5,000 per Property.

The following expenses are not included in the \$5,000 maximum cost limit per property:

- cost of debris removal;
- boarding;
- inspections;
- securing swimming pools;
- sump pumps;
- demolition;
- vacant property registration fees; and
- utilities.

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These expenses are subject to the line item allowances in [HUD's Property Preservation Allowances and Schedules](#).

#### (c) Requests for Exceeding Property Preservation Allowances

##### (i) Standard

The Mortgagee must request approval for expenses that exceed the Property Preservation Allowances from the [MCM](#) via [P260](#) when:

- the aggregate of all Property P&P expenses (excluding those not included in the \$5,000 maximum cost limit) exceeds the Maximum Property Preservation Allowance;
- a Property P&P cost will exceed the maximum line item allowance listed in the [Property Preservation Allowances and Schedules](#); or
- there is no specific line item allowance stated in the schedule for the expense.

When the Mortgagee submits an over-allowance request to exceed the Maximum Property Preservation Allowance, the Mortgagee must demonstrate their incurred P&P costs are at or near the Maximum Property Preservation Allowance.

##### (ii) Required Documentation

The Mortgagee must upload all supporting documentation into [P260](#), including a detailed description of what actions will be or were taken, an itemized list of the repairs and materials that will be or were used, relevant room dimensions, receipts, photographs, and a chronological listing of all Property P&P expenses incurred before submittal of the over-allowable expense request.

The following chart details requirements for over-allowable requests.

If Claimed Property Preservation Expenses are:	And the Cost of a Single Line Item Expense is:	Need Over-allowable Approval?
\$5,000* or less	Greater than Appendix 6.0.A	Yes
\$5,000* or less	Less than Appendix 6.0.A	No
Greater than \$5,000*	Greater than Appendix 6.0.A	Yes

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If Claimed Property Preservation Expenses are:	And the Cost of a Single Line Item Expense is:	Need Over-allowable Approval?
Greater than \$5,000*	Less than Appendix 6.0.A	Yes

\*\$5,000 does not include the cost of the following expenses: debris removal, boarding, inspections, securing of swimming pools, sump pumps, demolition, vacant Property, registration fees, and utilities.

#### (d) Appeals of Over-Allowable Request Decisions

The Mortgagee may appeal an initial over-allowance decision via [P260](#), for review by the [MCM](#).

The Mortgagee may submit a second appeal via P260, to the MCM. The MCM reviews and approves or denies the appeal or determine if further review by HUD is needed. The decision on the second appeal is final and no further appeals are accepted.

#### (6) Property P&P Requirements of Authorities Having Jurisdiction

##### (a) Definition

An Authority Having Jurisdiction (AHJ) refers to a state or local government, HOA, or other organization responsible for enforcing the requirements of a property-related code or standard including state law and local ordinance.

##### (b) Standard

Mortgagees are not exempt by HUD policy from adhering to state and local laws relating to the P&P of Properties securing FHA-insured Mortgages.

The Mortgagee must review the AHJ requirements, including those relating to occupancy of the Structures, to determine applicability for repair or remediation prior to conveyance of the Property to HUD.

Where state or local law inhibits the Mortgagee performing HUD's required Property P&P actions, such as connecting or disconnecting utilities, the Mortgagee must submit in P260 to the [MCM](#) notice of the restriction on the Property P&P action and a proposal on how the Mortgagee will otherwise protect the Property from damage.

Where the AHJ requires additional or more extensive P&P actions than required by HUD for conveyance, the Mortgagee may submit an over-allowance request via P260. The Mortgagee must upload with its request all

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documentation supporting the proposed additional work requirements and expenses necessary for compliance.

#### **(c) Required Documentation**

Where state or local law inhibits the Mortgagee performing HUD's required Property P&P actions, the Mortgagee must note the restriction in the Claim Review File and include a copy of the notice to the MCM, the MCM's approval or denial of the Mortgagee's proposal, and the applicable state, local, or AHJ requirement.

#### **(7) Securing and Maintaining the Property**

##### **(a) Standard**

The Mortgagee must secure the Property to prevent unauthorized entry and protect against weather-related damage and must visibly display 24-hour emergency telephone contact information in a weather-tight location on a window or door or as otherwise required by an AHJ. Securing the Property should take place as soon as reasonably practicable, but no more than five Days following the determination that the Property is vacant and/or abandoned post-foreclosure, or 15 business days following the determination that the Property is vacant and/or abandoned pre-foreclosure.

##### **(i) Locksets**

Where the Property has been conveyed to the Mortgagee after the foreclosure sale, the Mortgagee must:

- ensure that the lockset on the main entranceway remains secured; and
- rekey or replace all locksets on all secondary external entranceways and secure interior doorways, including attached garages and basements.

When rekeying, the Mortgagee must reset all locksets at the Property to a random identical key code and document the key code in the "Mortgagee's comments" of Part A of form [HUD-27011](#). If locksets cannot be replaced or rekeyed or are antique or architectural locksets, the Mortgagee may utilize alternative methods to secure the door and prevent damage to the hardware or door.

##### **(ii) Exterior Doors**

The Mortgagee must secure all exterior doors. For exterior sliding glass doors, the Mortgagee must latch these doors and install or provide slider locks, anti-lift blocks, security bars, or another secondary security mechanism.

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The Mortgagee must not brace, nail shut, or otherwise block or damage the door. If no other locking mechanism exists, the Mortgagee must board/secure access doors, pet doors, and other panels providing access to basements and crawl spaces, where permitted by state or local law.

##### **(iii) Garage/Overhead Doors**

The Mortgagee must secure the garage or overhead doors by:

- using existing locksets at garage/overhead doors if they can be rekeyed to the random identical key code for the Property;
- securing the garage/overhead doors with a padlock and hasp if no other locking mechanism exists;
- repairing or replacing inoperable garage doors; and
- disconnecting automatic garage door openers, if present, and leaving any remote keys or transmitters securely in the Property.

##### **(iv) Outbuildings**

The Mortgagee must secure sheds and outbuildings by:

- reusing and rekeying existing locksets at sheds and outbuildings to the dwelling key code, if possible;
- securing shed and outbuilding doors with a padlock and hasp if no other locking mechanism exists; and
- boarding/securing the outbuildings, if no doors or other securing mechanism exists. The Mortgagee may convey with boarded/secured outbuildings and sheds without prior approval.

##### **(v) Windows and Glazing**

The Mortgagee must secure all windows by:

- employing or installing locking mechanisms on all windows;
- removing all broken glass debris from the interior and exterior of the Property; and
- replacing broken or cracked window glazing. Where the AHJ requires replacement of dual-pane, tempered, thermal-sealed or other specialized glazing in kind, the Mortgagee must obtain prior over-allowance approval from the [MCM](#).

The Mortgagee must not brace, nail shut, or otherwise block or damage the windows.

##### **(vi) Boarding/Securing of Property Openings**

##### **Resecuring due to Vandalism or Unauthorized Property Access**

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The Mortgagee must resecure and reglaze windows, doors, and other access openings when the Property has been vandalized or accessed without authorization.

#### **Boarding/Securing Required by the AHJ**

The Mortgagee may secure windows, doors, and other access openings by boarding/securing if required by an AHJ and may convey with such boarding/securing in place.

#### **Boarding/Securing where Unable to Secure by Other Methods**

The Mortgagee may request approval from the MCM to board/secure openings that cannot be protected by any other method or where an imminent safety hazard exists, and to convey with boarding in place.

All boarding/securing materials that are leased or rented for the Mortgagee's convenience must be removed prior to conveyance of the Property to HUD.

#### **(b) Roof Assembly Repair**

The Mortgagee must ensure that all roof assemblies, including those securing attached garages, porches and patios, detached garages and any secondary structures associated with the origination collateral, and related weatherproofing are free of active leaks or other sources of water intrusion.

When a roof assembly leak is discovered, the Mortgagee must immediately repair the roofing system and mitigate further damage. The Mortgagee may provide such temporary repairs as tarping or patching until the permanent repair or replacement can be installed. The Mortgagee must ensure that permanent repairs or replacements, with materials matching or similar in color and material type, have been completed prior to conveyance to HUD. The Mortgagee is not required to obtain prior HUD approval for temporary repairs for which costs do not exceed the temporary roof repair line item allowance amount.

#### **(c) Pools, Hot Tubs and Spas**

##### **(i) In-Ground Pools, Hot Tubs and Spas**

Mortgagees must secure all in-ground swimming pools, hot tubs, and spas as required by local laws, codes and ordinances. The Mortgagee must:

- secure the pool, hot tub, and/or spa with a removable safety cover anchored to the pool deck or, if a cover cannot be anchored to the pool deck, board or otherwise secure the pool, hot tub, and/or spa; and

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- secure and repair any fences around the pool, hot tub, and/or spa to restrict access.

The Mortgagee must not drain operational in-ground pools. If the pool is empty, it is not necessary to refill the pool. The Mortgagee must drain hot tubs or spas located indoors or outdoors.

The Mortgagee must perform monthly maintenance and chemical treatments for operational pools. Where the Mortgagee must repair or drain the pool to mitigate damage or safety hazards, the Mortgagee must submit an over-allowance request.

#### **(ii) Above-Ground Pools**

Mortgagees must secure all above-ground swimming pools as required by local laws, codes and ordinances. In addition to local requirements, the Mortgagee must:

- drain the pool;
- secure the pool with a removable cover; and
- secure and repair any fences around the pool in order to restrict access.

Where the above-ground pool is in poor condition or cannot be secured, the Mortgagee must:

- remove the above-ground pool and any built-up decking; and
- remediate any resulting depression in the ground that may constitute a hazard.

#### **(iii) Ponds or Gardens**

The Mortgagee must drain, if feasible, or cover any small backyard ponds, water gardens, or other water features.

#### **(d) Drainage Systems and Basements**

The Mortgagee must reattach, replace, repair and clear debris from existing roof drainage and foundation drainage systems. If no drainage system exists at the time of the [FTV Property Inspection](#), the Mortgagee is not required to provide or install new systems.

The Mortgagee must ensure that downspouts provide positive drainage away from the structure and that gutters are cleared and do not prevent drainage.

If the FTV Property Inspection reveals basement flooding, the Mortgagee must drain or pump the basement, identify the water sources, and make other such repairs to prevent equipment damage, mold and organic growth, and structural and material damage.

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#### **(e) Mold, Fungus, Discoloration and Related Moisture Damage and Organic Growth**

##### **(i) Standard**

When mold or related moisture damage is found in the Property during the FTV Property Inspection, the Mortgagee must mitigate the source of the moisture to prevent further damage. HUD will not reimburse costs related to mold or organic growth abatement if it determines that such mold or organic growth is due to Mortgagee Neglect. The Mortgagee must thoroughly document the condition and scope of the moisture damage at the FTV Property Inspection.

##### **(ii) Over-Allowance Request**

The Mortgagee must submit an over-allowance request to the MCM for approval in the following circumstances:

- initial efforts to eliminate the mold or organic growth and to remove moisture are ineffective and additional treatments are needed to remove moisture and prevent mold and moisture damage; or
- the mold or organic growth poses a potential health and safety hazard.

Where the mold or organic growth poses a potential health or safety hazard, the Mortgagee must provide with its request:

- a written report and/or any lab reports or other testing data supporting the health or safety hazard determination;
- photographs of the discoloration;
- dimensions of the affected areas;
- a description of the initial mitigation efforts, including the basis for the selection of the method used;
- the proposed scope of work for the abatement; and
- at least two bids from licensed or certified mold remediation or hazardous materials contractors.

#### **(f) Debris Removal, Cleaning, and Minor Repair**

The Mortgagee must ensure that all interior and exterior debris is removed from the Property, including attics, basements, barns, storage spaces, and outbuildings, and that the Property is in Broom-swept Condition. The Mortgagee may request reimbursement for the storage or disposition of any Personal Property removed from the Property when such storage and disposition is required by the AHJ.



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###### **(i) Equipment, Fixtures, and Appliances**

The Mortgagee must ensure that all equipment, fixtures, and appliances present at the FTV Property Inspection and associated with origination collateral remain in the Property, unless approved by HUD for disposal.

The Mortgagee must empty and wipe clean the interior of all refrigerators and freezers. The Mortgagee must secure exterior clothes dryer vents and similar openings to prevent entry of pests. The Mortgagee must ensure that bathtubs, sinks, and toilets are cleaned and emptied.

###### **(ii) Graffiti**

The Mortgagee must remove or cover with similar or matching color all exterior and interior graffiti on all structures and fencing.

###### **(iii) Exterior Debris**

The Mortgagee must ensure that the Property is free of external debris by removing all vehicles, boats, trailers, any unsafe or hazardous structures, and other Personal Property, as allowed and in accordance with state and local law requirements.

The Mortgagee may allow affixed Personal Property in sound and usable condition to remain in place that may add value to the Property, such as fountains, children's play structures, sheds, ramadas, pergolas, or gazebos.

###### **(iv) Fences**

The Mortgagee must ensure that fences and gates present at the [FTV Property Inspection](#) are maintained in secure and upright condition, with no missing panels or sections.

###### **(v) Pests**

The Mortgagee must ensure that the Property is free of animals, vermin, and insect infestation and that any dead animals, vermin, and insects are removed from the Property.

When the Mortgagee determines the Property is infested with pests and that the infestation and removal may constitute a health or safety hazard, the Mortgagee may obtain professional pest control services; otherwise, the Mortgagee may employ over-the-counter pest control products.

When evidence of live wood boring insects is discovered, the Mortgagee must request an over-allowance for an inspection by a professional pest

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control service, and provide the report and treatment recommendations for over-allowance consideration to abate.

##### **(vi) Floors and Walkways**

The Mortgagee must ensure that interior walking surfaces are safe or otherwise patched, replaced, or repaired to be free of hazards as follows:

- any floor finishes, including carpeting, sheet vinyl, wood, laminate, ceramic or vinyl tiles, and all tack strips and fittings that are damaged, loose, or otherwise hazardous, must be removed. The Mortgagee is not required to replace these finishes once removed; and
- holes or openings in interior walking surfaces must be patched, replaced, or repaired. Weak or spongy flooring must be inspected and, if needed, repaired to address hazardous conditions with an approved over-allowance.

The Mortgagee must repair damaged or missing handrails or stair treads on elevated exterior porches, patios, decks, and balconies where the distance from the finished floor to the ground surface is greater than 18 inches. If repair is not feasible, the Mortgagee must provide temporary rails, fencing, or other means to prevent or mitigate falls.

##### **(vii) Regulated Hazardous Materials**

The Mortgagee must handle and dispose of hazardous materials regulated by federal, state, or local law in accordance with those laws.

Where removal of hazardous materials exceeds HUD's reimbursable amounts for debris removal, the Mortgagee must submit an over-allowance request prior to incurring those costs. The Mortgagee must include with the request:

- the relevant code or regulation describing the specific handling or disposal requirements;
- if testing is required to confirm the presence of hazardous materials, detailed reports or test results, with information on the location of the materials, the scope of the work, and recommended methods for removal, abatement or remediation of the materials; and
- at least two bids from licensed or certified hazardous materials contractors.

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### **(8) Yard Maintenance and Snow Removal**

#### **(a) Definitions**

Grass Cuts are the Property P&P actions of mowing, weeding, edge trimming, sweeping of all paved areas, and removing all lawn clippings, related cuttings, and debris.

#### **(b) Standard**

The Mortgagee is responsible for maintaining lawn and yard areas and trees, shrubs, and vines in compliance with AHJ requirements by performing Grass Cuts.

The Mortgagee must ensure that yards are maintained as follows:

- Grass must be cut to a maximum of two inches in height.
- Grass and weeds must be cut to the edge of the property line, and trimmed around foundations, bushes, trees, and planting beds.
- Grass, trees, tree limbs, shrubs, and other vegetation that are obstructing the public right of way must be trimmed or removed.
- Desert, xeriscape, or rock scape landscaping maintenance must be maintained through removal or spraying of weeds, grass trimming or cutting, and the removal of related cuttings and incidental debris.
- Dead trees or tree limbs that pose a safety hazard or may potentially damage the Property must be removed or trimmed.

#### **(c) Grass Cuts**

##### **(i) Standard**

The Mortgagee must complete initial and ongoing Grass Cuts and desert landscaping according to the timelines set in the [Grass Cut Schedule](#).

Should a Property require earlier or more frequent Grass Cuts or desert landscaping maintenance due to specific micro-climate conditions or other property requirements, the Mortgagee must perform such cuts or landscaping.

If additional or more frequent Grass Cuts are required as a result of code violations or neighbor complaints, the Mortgagee must submit to the [MCM](#) a request to exceed the allowable amount and documentation supporting the amended timeline.

##### **(ii) Required Documentation**

Should a Property require earlier or more frequent Grass Cuts or desert landscaping maintenance due to specific micro-climate conditions or other

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property requirements, or if additional or more frequent Grass Cuts are required as a result of code violations or neighbor complaints, the Mortgagee must include in the Claim Review File documentation supporting the Mortgagee's amended timeline.

##### **(d) Shrubs**

The Mortgagee must trim shrubs and remove cuttings once in a growing season, between April 1 and October 31.

##### **(e) Snow Removal**

The Mortgagee must ensure that the Property is safe and accessible throughout the winter season by:

- removing snow from the entire entryway, public and other front yard walkways, porch, and driveway, following a minimum three-inch accumulation; and
- complying with local codes and ordinances governing the removal of snow and ice.

##### **(f) HOA Yard Maintenance**

If an HOA or condominium association provides for the yard maintenance and snow removal actions, the Mortgagee must not order duplicate yard maintenance and snow removal actions.

#### **(9) Winterization Requirements**

##### **(a) Time Frame for Winterization**

The Mortgagee must winterize the Property once, according to the [Winterization Schedule](#). All Properties located in the State of Alaska must remain winterized at all times.

Where earlier or extended winterization is required due to specific micro-climate conditions or other property requirements, the Mortgagee must perform such winterization and include in the Claim Review File documentation supporting the Mortgagee's amended winterization timeline.

Where the initial winterization is no longer effective, the Mortgagee must re-winterize the Property and include in the Claim Review File documentation demonstrating the need to re-winterize.

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#### (b) Utilities

##### (i) Standard

The Mortgagee must turn all utilities off unless:

- prohibited by state or local law;
- required to remain on per HOA or condominium association requirements;
- the Property is an attached unit or a dwelling with shared systems such as a row house, townhouse or Condominium;
- required to remain on to protect the Property;
- required to operate equipment such as sump pumps, swimming pools, wells, dehumidifiers, or other equipment or systems required to remain in operation; or
- where the Mortgagee determines that utility disconnection fees and charges make it cost-effective to maintain utility service rather than disconnect the service.

The Mortgagee must ensure that active piping and exposed electrical wiring is capped, valved, or otherwise terminated.

If utilities remain on, the Mortgagee must note in the Claim Review File the reasons for maintaining utility service and, if applicable, include a copy of the state or local requirement for maintaining utility service.

##### (ii) Sump Pumps

The Mortgagee must ensure that all installed or required sump pumps are in-place and operational at all times, where state or local law permits electricity to remain on. The Mortgagee must repair or replace any non-functioning or missing equipment.

##### (iii) Utility Accounts

The Mortgagee must retain all utility accounts in its name until conveyance of the Property to HUD.

In states or jurisdictions where utilities should remain on, if there is any reason to believe that a Borrower may abandon a Property, the Mortgagee must contact the utility company to request notification of non-payment of utilities so that utilities can be transferred to the Mortgagee's name if the Borrower vacates the Property.

##### (iv) Propane and Oil Systems

In jurisdictions requiring heat to remain on, the Mortgagee must put a "KEEP FULL" contract on with a local supplier when the Property has a

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propane or oil heating system. Otherwise, the Mortgagee must ensure that active piping is capped, valved, or otherwise terminated and all fuel tanks are emptied.

#### **(v) Domestic Water**

The Mortgagee must not cut water lines or remove water meters, unless required by the AHJ.

#### **(vi) Wells**

If the water supply is a private well, the Mortgagee must:

- turn off the well at the breaker panel;
- secure the breaker;
- disconnect and cap, valve, or otherwise terminate the water supply line between the Property and pressure tank;
- install a hose bib on the pressure tank side of the breaker, tagging the hose bib “For Water Testing;”
- drain all pressure tanks;
- drain pump housing if the pump is surface-mounted;
- disconnect the check valve and drain all pump, suction, and discharge pipes, if the pump is submersible; and
- winterize all fixtures.

#### **(vii) Water, Plumbing, and Heating Systems**

The Mortgagee must:

- shut off or disconnect the domestic water supply at the curb;
- drain all plumbing and heating systems; and
- ensure that all toilets are cleaned and emptied.

Where a toilet or other plumbing fixture has been compromised by an unauthorized entry or wastewater backflow, the Mortgagee must complete re-winterization and cleaning.

#### **(c) Winterization of Swimming Pools**

During the winterization period, the Mortgagee must drain all lines and filters and secure and maintain operational swimming pools to prevent damage.

#### **(d) Additional Winterization Requirements for Properties located in Alaska**

In addition to the winterization requirements described above, the Mortgagee must ensure that for all properties located in the State of Alaska:

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- the heat remains on, with the thermostat set at 55 degrees Fahrenheit; and
- all utilities remain connected and in working order, where permitted by state or local law.

#### **(e) Responsibility for Damage Due to Freezing**

The Mortgagee is responsible for any damage to plumbing and heating systems, sump pumps, and wells caused by untimely, inadequate, or improper maintenance or winterization.

HUD considers any damage caused by freezing and not documented at the FTV Property Inspection to be the responsibility of the Mortgagee and not reimbursable by HUD.

#### **(10) Demolition**

If the Mortgagee proposes to demolish or remove a primary dwelling structure, a significant section of the structure or a secondary structure that is associated with the origination collateral, the Mortgagee must request approval from the MCM to demolish and convey as a vacant lot. The Mortgagee is not required to request HUD approval to demolish damaged or unusable sheds and outbuildings that were not included in the property value at origination. For requests to demolish a primary dwelling structure, the Mortgagee must submit to the MCM:

- a BPO analysis estimating the value of the Property “as-is” and as a vacant lot;
- proposed demolition costs; and
- a detailed chronology of the servicing and Property P&P actions related to the Property, including all efforts to address any damages or violations.

Where a local jurisdiction mandates demolition of a Property after foreclosure, the Mortgagee must provide the following to the MCM immediately upon discovery of the demolition order:

- copies of all notices pertaining to demolition orders and hearings; and
- [inspection reports and photographic documentation](#) establishing the condition of the Property when the Mortgagee first entered or took possession of the Property.

The MCM advises the Mortgagee as to whether to proceed with the demolition or to postpone the demolition until after conveyance to HUD.

#### **(a) Requests Less than Five Business Days before Conveyance**

The MCM rejects any requests received less than five business days before the end of the time frame to convey to HUD, unless the Mortgagee can

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demonstrate that it received the demolition notification with insufficient time to make a request by this deadline.

#### **(b) Cost of Demolition**

The cost of demolition is not included in the maximum cost limit per Property.

#### **(c) Damage due to Mortgagee Neglect**

If HUD determines that the damage to the Property is due to Mortgagee Neglect, the Mortgagee is responsible for the cost to demolish the Property. The MCM determines the acceptance of the vacant lot.

### **(C) Conveyance of Damaged Properties**

#### **(1) Conveyance without Prior HUD Approval**

The Mortgagee may convey Properties without prior written approval when:

- the Property is in conveyance condition, with no Surchargeable Damage; and
- the aggregate of all allowable Property P&P expenses does not exceed the Maximum Property Preservation Allowance and claimed P&P costs do not exceed the [Property Preservation Allowances](#) line item.

#### **(2) Conveyance Requiring HUD Approval**

##### **(a) Request to HUD**

The Mortgagee must request and obtain approval from the MCM before conveyance under any of the following circumstances:

- conveyance of a Property damaged while under the control of the Mortgagee or as a result of Mortgagee Neglect;
- conveyance of a Property with unrepaired insurable damage and insurance repair proceeds;
- conveyance of a Property “as-is” with unfinished renovations, violations, liens, or other outstanding state law and local code compliance issues; and
- demolition and/or conveyance of a vacant lot.

##### **(b) Required Documentation for Request**

In its request to convey the damaged Property, the Mortgagee must include the following documentation:

- the date of vacancy;
- evidence validating the property condition at vacancy;
- supporting documentation including inspection reports, photographs, repair bids, and receipts;



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- a chronology of actions performed by the Mortgagee to preserve and protect the Property;
- for damaged Properties with approval to convey with insurance proceeds, all related damage reimbursement funding, including insurance deductibles, recoverables, and depreciation; and
- for Properties with unfinished renovations, violations, liens, or other outstanding state and local law compliance issues:
  - the BPO showing the value of the Property “as-is” and the value with repairs completed;
  - copies of violations, liens, or relevant state or local law;
  - hazard insurance claim information, including hazard insurance denials;
  - a detailed description of the reason(s) that the Mortgagee cannot feasibly repair or secure the Property, proposed actions or actions taken, and a detailed repair estimate of the damages; and
  - a detailed estimate of cost to repair the Property.

If no documentation or inadequate documentation is received from the Mortgagee, HUD attributes all damage to the Mortgagee.

#### **(3) Mortgagee Failure to Obtain Required HUD Approval**

If the Mortgagee fails to obtain HUD approval when required, prior to conveying a damaged Property, HUD may:

- reconvey the Property;
- require a reduction to the claim for insurance benefits:
  - the hazard insurance recovery or HUD’s estimate of the cost of repairing damage; or
  - the cost to repair and restore the Property to required conveyance condition; or
- take other such action as permitted by regulation.

#### **(4) Appeal of Surchargeable Damage Decision**

The Mortgagee may appeal a surchargeable request decision via P260. The Mortgagee may submit an additional appeal to HUD via P260. The second appeal decision is final and no further appeals are accepted.

#### **(D) Hazard Insurance Recovery**

The Mortgagee must take all appropriate action to recoup all available hazard insurance proceeds, including recoverable depreciation.

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###### **(1) Extension of Time to Convey Title to HUD**

Where conveyance of title to HUD jeopardizes the Mortgagee's ability to receive hazard insurance proceeds, the Mortgagee must request an extension of time from the [MCM](#), providing a specific reason why the extension is warranted.

###### **(2) Reimbursement for Recoverable Depreciation**

The Mortgagee must seek reimbursement for any recoverable depreciation after repairs have been completed; all damages must be repaired prior to conveyance.

###### **(3) Recovery for Vandalism or Theft**

###### **(a) Standard**

If there is evidence of vandalism or theft resulting in damage or missing built-in appliances, equipment, or fixtures, the Mortgagee must file a claim to obtain all available insurance proceeds for damages to the Property.

Unless the Mortgagee obtains [HUD approval to convey](#) with unrepaired insurable damage and insurance repair proceeds, the Mortgagee must use these insurance proceeds or corporate funds to fully repair or replace the damaged structures, appliances, equipment, or fixtures.

###### **(b) Required Documentation**

The Mortgagee must document in the Claim Review File all relevant claim correspondence with the insurance company.

##### **(E) Requests for Pre-Conveyance Inspection**

###### **(1) Definition**

A Pre-Conveyance Inspection is an inspection performed by HUD, at the Mortgagee's request, before conveyance to determine if a Property meets HUD's conveyance standards.

###### **(2) Standard**

The Mortgagee may request a Pre-Conveyance Inspection of a Property that has sustained damage due to Borrower neglect or Surchargeable Damage, but not Mortgagee Neglect.

###### **(3) Submission of Pre-Conveyance Inspection Request**

The Mortgagee may submit a request for a Pre-Conveyance Inspection to the [MCM](#) before the deed to HUD is recorded or sent for recording and before the submittal of a claim.

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#### (4) HUD Review of Request

The MCM reviews the request to determine whether a Pre-Conveyance Inspection is needed and may consider the following criteria in its decision:

- the Property has completed over-allowance repairs exceeding \$10,000;
- the Property is affected by re-occurring vandalism and the Mortgagee is requesting approval to convey the Property “as-is” to HUD;
- the Property has code violations and the Mortgagee is requesting approval to convey the Property “as-is” to HUD;
- the Property is located in a PDMDA and has completed repairs exceeding \$10,000;
- the Property has an insurable claim with completed repairs exceeding \$5,000;
- the Property has unrepaired Borrower neglect damage affecting mechanical, electrical, plumbing, or structural system integrity; and
- the Property has uninsurable and unfinished renovations, and the Mortgagee is requesting approval to convey the Property “as-is” to HUD.

#### (5) Pre-Conveyance Inspection

If the request for the Pre-Conveyance Inspection is approved, the MCM orders the Pre-Conveyance Inspection from HUD’s Field Service Manager (FSM), who contacts the Mortgagee to coordinate the inspection. Upon completion of the inspection, the FSM provides an inspection report indicating:

- whether the Property is in conveyance condition; or
- further actions the Mortgagee must take to place the Property into Acceptable Conveyance Condition.

The Mortgagee must ensure that all required actions identified on the Pre-Conveyance Inspection report are completed before conveyance to HUD.

#### iv. Condition of Title

The Mortgagee must convey good and marketable title to the Secretary.

HUD regulations list certain specific and common exceptions to title in [24 CFR §§ 203.385 through 203.391](#) to which HUD will not object. HUD may waive additional objections, based on local practice and the general marketability of title clouded by those objections, or if the Mortgagee is willing to accept a reduced claim for mortgage insurance benefits.

#### (A) Liens

HUD will not accept title subject to liens, other than the following:

- IRS Liens;
- Section 235 Liens; and

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- a PACE Obligation.

#### (1) IRS Liens

HUD will not object to title where there is a lien in favor of the IRS, regardless of its position, if the following conditions are met:

- the IRS has been notified of the foreclosure;
- the IRS lien was established after the date of the mortgage lien; and
- the Mortgagee bid at least the full amount of the indebtedness plus the cost of foreclosure.

#### (2) Section 235 Liens

HUD will accept title subject to a junior lien securing the repayment of Section 235 assistance payments.

#### (3) PACE Obligation

HUD will allow a notice of lien recorded in the land records securing repayment of a PACE obligation that may only become subject to an enforceable claim (i.e., a lien) for delinquent regularly scheduled PACE special assessment payments and otherwise complies with the eligibility and acceptability criteria for Properties encumbered with a PACE obligation provided in [PACE Obligation Review](#).

### (B) Payment of Taxes

#### (1) Taxes at Conveyance

##### (a) Standard

Prior to the conveyance of a Property to HUD, the Mortgagee must satisfy all taxes and special assessments, including any PACE assessments:

- due and payable prior to or on the date of conveyance; or
- due and payable within 30 Days after the date of conveyance.

##### (b) Required Documentation

The Mortgagee must:

- certify that all available tax and assessment bills due at conveyance and within 30 Days of conveyance are paid as of the date of conveyance;
- document payment and identify the most recent period for which taxes were paid in Item 32, “Schedule of Tax Information,” of form [HUD-27011](#), Part A; and
- upload to P260 documentation, such as a paid receipt or a copy of the Mortgagee’s tax payment history screen, validating that payment was made.

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The Mortgagee must also retain invoices, paid bill receipts, or other proof of payment in the Claim Review File.

#### **(2) Tax Penalties**

When late fees and/or interest penalties are incurred as a result of the Mortgagee's failure to pay taxes prior to conveyance, HUD will not reimburse the Mortgagee for late fees and/or interest penalties paid by the Mortgagee, and the Mortgagee must reimburse HUD for any late fees and/or interest penalties paid by HUD.

#### **(3) Mortgagee Failure to Pay Taxes, Late Fees, and/or Interest Penalties**

Where taxes, late fees and/or interest penalties are owed to the taxing authority when a Property is conveyed to HUD, HUD may elect to:

- Reconvey the Property back to the Mortgagee; or
- refuse to accept the conveyance.

#### **(C) Payment of HOA/Condominium Fees**

##### **(1) Definitions**

A Homeowners' Association (HOA)/Condominium Assessment is a periodic payment required of property owners by an HOA or condominium association.

HOA/Condominium Fees are HOA/Condominium Assessments plus interest, Late Charges, collection/attorney fees, and other penalties.

##### **(2) Standard**

Prior to the conveyance of a Property to HUD, the Mortgagee must pay HOA/Condominium Fees that are due and that become due within 30 Days of the date of conveyance. While the payment of HOA/Condominium Fees is the Borrower's responsibility, Mortgagees must ensure that Properties conveyed to HUD have clear title.

The Mortgagee must take the following actions:

- provide notice of foreclosure proceedings to HOA/condominium management companies;
- unless prohibited by state law, ensure that outstanding HOA/Condominium Fees are included as part of the foreclosure proceedings in the event the HOA/condominium management company does not pursue these amounts in foreclosure;
- negotiate the amount required to obtain a release of outstanding HOA/Condominium Fees;
- obtain a release of outstanding HOA/Condominium Fees;
- ensure that the HOA/condominium lien, if any, is removed from the title to the Property prior to conveying the Property to HUD; and

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- pay the HOA/Condominium Assessment required under applicable law before conveyance to HUD, where HOA/Condominium Fees do not survive foreclosure or result in a lien on the Property.

#### **(3) Required Documentation**

The Mortgagee must document the payment of all final bills and pre- and post-foreclosure liens for HOA/Condominium Fees in the “Mortgagee’s Comments” section of form [HUD-27011](#), Part A.

Within 15 Days of conveyance, the Mortgagee must upload to [P260](#) the paid HOA/condominium invoice and any other documentation necessary to verify that the Mortgagee made such payments prior to conveyance, and, if applicable, document any common area requirements associated with gaining access to the Property.

#### **(4) Lack of Information on HOA or Condominium Association Assessments and Fees**

##### **(a) Standard**

On a case-by-case-basis, at its sole discretion, HUD may accept conveyances where the Mortgagee has requested and has been unable to obtain sufficient information on HOA/Condominium Fees to resolve them prior to conveyance.

##### **(b) Required Documentation**

The Mortgagee must request a variance through HUD’s MCM by submitting:

- a certification stating that the Mortgagee has exhausted all methods of obtaining and paying the outstanding HOA/Condominium Assessments; and
- evidence documenting its attempts to obtain and pay these assessments and fees as follows:
  - at least three phone calls;
  - certified mail notices to HOA/condominium contacts from the Mortgagee’s attorneys; and
  - documentation validating the pursuit of available legal remedies and evidencing the resolution or final decisions resulting from arbitration or court proceedings.

#### **(D) Payment of Water and Sewer Bills and Other Assessments**

##### **(1) Standard**

The Mortgagee must retain utilities including electricity, gas, home heating oil, water, and sewer in its name until conveyance of the Property to HUD.

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Prior to the conveyance of a Property to HUD, Mortgagees must research, obtain, and pay all available utility bills that may become a lien attached to a Property after foreclosure as follows:

- In states where utilities are not required to remain on to protect the Property, Mortgagees must obtain and pay a final bill up to the date of conveyance; and
- In states where utilities are required to remain on, Mortgagees must pay:
  - all available bills that are due prior to conveyance; and
  - within 60 Days after the date of conveyance, the final bill calculated to the Day on which utilities are transferred to HUD.

#### **(2) Required Documentation**

For Properties in states where utilities are not required to remain on to protect the Property, no later than 60 Days after conveyance, the Mortgagee must upload to [P260](#) the paid invoice and any other documentation necessary to verify that the Mortgagee made such payments.

For Properties in states where utilities are required to remain on, the Mortgagee must upload to [P260](#) the paid invoices and any other documentation necessary to verify that the Mortgagee made the payment for the final bill.

#### **(3) Failure to Pay Utility Bills**

If the Mortgagee fails to pay utility bills, HUD, at its sole discretion, may:

- issue a Notice of Non-Compliance and demand payment from the Mortgagee in an amount that sufficiently satisfies any liens or encumbrances, including penalties and interest, which prevent or delay a sale; or
- Reconvey the Property to the Mortgagee.

#### **v. Notice of Property Transfer**

The Mortgagee must notify the Commissioner on the date the deed to the Secretary is filed for recording, by:

- filing form HUD-27011 in [FHAC](#); and
- submitting a copy to HUD's [MCM](#).

The Mortgagee must prepare conveyance deeds to the Secretary of HUD. Deeds must be recorded in the name of the "Secretary of Housing and Urban Development, their successors and assigns," hereinafter referred to as "Grantee," whose address is HUD's [MCM](#).

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#### vi. Submission of Title Evidence for Conveyance to HUD

##### (A) Submission of Title Evidence to the MCM

###### (1) Standard

The Mortgagee must submit to HUD's [MCM](#) via [P260](#) the following documentation reflecting ownership vested in the name of the Secretary no more than 45 Days after the date the deed is filed for record:

- original title evidence;
- a copy of form [HUD-27011](#), Part A;
- a copy of the mortgage instrument, containing a complete legal description of the Property; and
- a copy of the recorded deed.

###### (2) Extension to the Deadline to Submit Title Evidence

To request an extension to the deadline to submit title evidence, the Mortgagee must:

- submit a request for an extension via [P260](#) before the expiration of the 45-Day time frame; and
- provide documentation supporting the reason for the request.

##### (B) Title Evidence

The Mortgagee must provide one of the following types of title evidence of recorded title to the Secretary. The Mortgagee may also submit similar evidence of title that conforms to the standards of a supervising branch of the federal, state, or territory government.

###### (1) Fee or Owner's Title Policy

The Mortgagee may submit:

- a fee or owner's policy of title insurance, in the name of the Secretary and insuring the benefit of the Secretary's successors in office;
- a guaranty or guarantee of title; or
- a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments.

When the Mortgagee submits a title policy as evidence of good and marketable title, the amount of title insurance coverage must be equal to the unpaid principal balance of the Mortgage.

The Mortgagee must upload to [P260](#) and include in its original title evidence package a copy of the appraisal used to determine the CAFMV when:



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- the Mortgagee is the successful bidder for an amount equal to the CAFMV for sales conducted under CWCOT procedures; and
- the Mortgagee elects to convey the Property's title to HUD.

#### **(2) Mortgagee Policy of Title Insurance**

The Mortgagee may submit a Mortgagee's policy of title insurance supplemented by an abstract and an Attorney's Certificate of Title covering the period after the Closing Date. The Mortgagee must ensure that, under the terms of the policy, the liability of the title company will continue in favor of the Secretary after title is conveyed to them.

#### **(3) Abstract and Legal Opinion**

The Mortgagee may submit:

- an abstract of title, prepared by an abstract company or individual engaged in the business of preparing abstracts of title; and
- a legal opinion as to the quality of the title. The Mortgagee must ensure that this legal opinion is prepared and signed by an attorney experienced in examination of titles.

#### **(4) A Torrens or Similar Title Certificate**

The Mortgagee may submit a Torrens or similar title certificate.

### **(C) Title Evidence for Manufactured Housing**

#### **(1) Standard**

For Manufactured Housing, the Mortgagee must include title evidence that:

- the Manufactured Home is attached to the land; and
- the Manufactured Home is classified and taxed as real estate.

The Mortgagee must ensure that all state or local requirements for proper purging of the title have been met.

#### **(2) Required Documentation**

The Mortgagee must:

- upload the title evidence into [P260](#) on or before the filing date of form [HUD-27011](#), Part A; and
- certify in the "Mortgagee's Comments" section of form HUD-27011, Part A that the required additional title work has been completed and uploaded.

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#### **(D) HUD Review of Title Evidence**

The MCM will review the title evidence and notify the Mortgagee of its approval or rejection or if additional information is needed.

#### **(E) HUD Requests for Additional Title Information**

If HUD requests additional title information, the Mortgagee must provide this information within 10 Days of the request to avoid rejection of the title evidence.

If title evidence is later approved after the submission of additional information, HUD will provide the Mortgagee with a title approval letter showing the “Date Title Received” as the date the Mortgagee resubmitted the complete title evidence.

#### **vii. Responsibility for Property at Conveyance**

The Mortgagee is responsible for the Property until all HUD regulatory requirements leading to conveyance have been complied with, including:

- filing to record the deed to the Secretary of HUD; and
- filing form HUD-27011 in [FHAC](#) for claim processing and payment.

The Mortgagee remains responsible for the Property and any loss or damage thereto should the claim be suspended due to the need for review or correction of a hard edit error, notwithstanding the filing of the deed to the Secretary.

#### **(A) Damage at Inspection at or after Conveyance**

HUD will presume that any damage discovered during HUD's first inspection of the Property after conveyance occurred while the Mortgagee had possession, unless the Mortgagee is able to provide evidence to the contrary.

#### **(B) Expenses Incurred at or after Conveyance**

Without the express written approval of the MCM, the Mortgagee must not incur expenses for P&P of the Property or for eviction of the occupant on or after the date the deed is filed for record.

HUD will not reimburse P&P or property-related expenses incurred after the deed has been recorded in HUD's name, other than payment of certain utility bills or HOA payments.

#### **(C) Cancellation of Hazard Insurance**

The Mortgagee must request Hazard Insurance be canceled as of the date the deed is filed for record. The Mortgagee may calculate the amount of the return premium due on a short-rate basis.

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#### viii. Extension of Time for Conveyance

##### (A) Standard

To request an extension to the deadline to convey the Property to HUD, the Mortgagee must:

- submit a request for an extension via [P260](#) before the expiration of the time frame; and
- provide documentation supporting the reason for the request.

##### (B) Required Documentation

The Mortgagee must maintain a copy of the written response from the HUD representative in the Mortgagee's Claim Review File.

##### (C) Appeal of Extension Decision

The Mortgagee may appeal a decision on a request for an extension via P260 for review by the MCM. The Mortgagee may submit a second appeal via P260. The MCM will review and approve or deny the appeal or determine if further review by HUD is needed. The decision on the second appeal is final and no further appeals will be accepted.

#### ix. HUD Acceptance of Conveyance

HUD considers a Property conveyed by the Mortgagee to HUD when:

- the Mortgagee has deeded the Property to HUD; and
- HUD accepts conveyance of the Property, as evidenced by the payment of Part A of the claim from HUD to the Mortgagee.
- For [suspended claims](#), notwithstanding the filing of the deed to the Secretary for record, the Mortgagee remains responsible for the Property, and any loss or damage thereto, and such responsibility is retained by the Mortgagee until HUD regulations have been fully complied with.

#### x. Reconveyance

##### (A) Definition

A Reconveyance is a conveyance of a Property from HUD back to the Mortgagee due to the Mortgagee's failure to comply with HUD's conveyance requirements.

##### (B) Standard

If a Mortgagee fails to fully comply with the terms of the insurance contract, including HUD's conveyance requirements, HUD may:

- Reconvey title to the Mortgagee; and
  - cancel the Mortgagee's [claim for insurance benefits](#); and

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- request reimbursement for expenses incurred for acquisition, holding and Reconveyance, less any income received from the Property, from the date the deed to HUD was filed for record to the date of Reconveyance; or
- enter into a [Reconveyance Bypass Agreement](#) with the Mortgagee.

The Mortgagee may reapply for insurance benefits.

#### u. Deficiency Judgments

Where the mortgaged Property is sold at the foreclosure sale for less than the unpaid balance of the debt, HUD may seek a deficiency Judgment, unless prohibited by the terms of the Mortgage.

#### i. HUD-required Deficiency Judgments

##### (A) Mortgages Insured On or After March 28, 1988

For Mortgages insured pursuant to Firm Commitments issued on or after March 28, 1988, or pursuant to direct endorsement processing when the Mortgagee's underwriter signed the credit worksheet on or after March 28, 1988, HUD may require the Mortgagee to pursue a deficiency Judgment. Where HUD requires the Mortgagee to pursue a deficiency Judgment, HUD will provide the Mortgagee with instructions and with its estimate of the FMV of the Property, less adjustments. Upon receipt of such notification, the Mortgagee must:

- tender a bid at the foreclosure sale in that amount; and
- attempt, in accordance with state law, to obtain a deficiency Judgment.

##### (B) Mortgages Insured Before March 28, 1988

For Mortgages insured pursuant to Firm Commitments issued before March 28, 1988, or pursuant to direct endorsement processing when the Mortgagee's underwriter signed the credit worksheet before March 28, 1988, HUD may request the Mortgagee to pursue a deficiency Judgment.

#### ii. Procedures for Claims Without Conveyance of Title

Unless specifically requested by FHA, the Mortgagee is not required by FHA to pursue any deficiency Judgments in connection with [CWCOT procedures](#).

#### iii. Assignment of Judgments

##### (A) When Filing a Claim for Insurance Benefits

The Mortgagee must assign deficiency Judgments to HUD and transmit the Judgment to the NSC no later than 30 Days after the Judgment was obtained, if the Mortgagee filed a claim for mortgage insurance benefits.

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1                   **(B) When Not Filing a Claim for Insurance Benefits**

2                   The Mortgagee may engage in Judgment collection activities if a claim for FHA  
3                   insurance benefits is not filed.

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### III. SERVICING AND LOSS MITIGATION

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#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Adjustable Rate Mortgages

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#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options]

##### a. Adjustable Rate Mortgages

###### i. Definitions

The Change Date is the effective date of an adjustment to the interest rate, as shown in Paragraph 4(A) of the model [Adjustable Rate Note](#) form.

The Initial Index Figure is the most recent figure available before the Closing Date of the Mortgage.

The Current Index Figure is:

- the most recent index figure available 30 Days before the date of each interest rate adjustment, for Mortgages closed before January 10, 2015; and
- the most recent figure available 45 Days before the date of each interest rate adjustment, for Mortgages closed on or after January 10, 2015.

###### ii. Adjusting the Interest Rate on an ARM

To set the new interest rate on an ARM annually, the Mortgagee must review the mortgage documents containing interest rate provisions, and:

- determine the change between the Initial Index Figure and the Current Index Figure; or
- add a specified margin to the Current Index Figure.

Once the new adjusted interest rate is calculated, the Mortgagee must provide notice of the change to the Borrower.

###### (A) Determining the Current Index Figure on an ARM

The table below describes the Current Index Figure to use based upon the day of the week on which the 30<sup>th</sup> Day falls.

When the 30 <sup>th</sup> Day falls on a ...	AND the 30 <sup>th</sup> Day prior to a Change Date...	Then use the index figure issued on...
Monday that is a business day	and the issue date of an H.15 release both occur on the same day (that is, they both occur on a Monday)	that Monday.
Monday that is a federal holiday	falls on a Monday that is a federal holiday	the prior week.

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When the 30 <sup>th</sup> Day falls on a ...	AND the 30 <sup>th</sup> Day prior to a Change Date...	Then use the index figure issued on...
day of the week other than Monday	n/a	the Monday of that week (or issued on Tuesday, if Monday is a federal holiday).

#### (B) Determining the Calculated Interest Rate on an ARM

The calculated interest rate is the current index plus the margin (the number of Basis Points (bps) identified as “margin” in Paragraph 4(C) of the model [Adjustable Rate Note](#)), rounded to the nearest 1/8<sup>th</sup> of one percentage point (0.125 percent).

#### (C) Determining the New Adjusted Interest Rate on an ARM

To determine the new adjusted interest rate, the Mortgagee must compare the calculated interest rate to the existing interest rate in effect for the preceding 12 months.

##### (1) Calculated Rate is Equal to Existing Rate

If the calculated interest rate is equal to the existing interest rate, then the new adjusted rate is the same as the existing interest rate.

##### (2) Calculated Rate is Less than Existing Rate

If the calculated interest rate is less than the existing interest rate, then the new adjusted rate is:

- the calculated interest rate for 1-, 3-, and 5-year ARMs if the calculated interest rate is less than one percentage point higher or lower than the existing interest rate; or
- the calculated interest rate for 5-, 7-, and 10-year ARMs if the calculated interest rate is less than two percentage points higher or lower than the existing interest rate.

##### (3) Calculated Rate is More than Existing Rate

If the calculated interest rate is more than the existing interest rate, then the new adjusted rate will be:

- limited to one percentage point higher or lower than the existing interest rate for 1-, 3-, and 5-year ARMs, if the new calculated interest rate is more than one percentage point (100 bps) higher or lower than the existing interest rate. (Note: index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year); or
- the calculated interest rate for 5-, 7- and 10-year ARMs, if the calculated interest rate is more than two percentage points (200 bps) higher or lower

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than the existing interest rate. (Note: index changes in excess of two percentage points may not be carried over for inclusion in an adjustment in a subsequent year).

#### **(D) Interest Rate Adjustments over the Term of the ARM**

The Mortgagee must not adjust the interest rate over the entire term of the Mortgage resulting in a change in either direction of more than:

- five percentage points (500 bps) from the initial contract interest rate for 1-, 3-, and 5-year ARMs; or
- six percentage points (600 bps) for 5-, 7-, and 10-year ARMs.

#### **(E) Effective Date of the ARM Interest Rate Adjustment**

The adjusted interest rate is effective on the Change Date and remains in effect until the next Change Date.

During the term of the Mortgage, the Change Date must fall on the same date of each succeeding year.

#### **iii. Computing the Monthly Installment Payment after an ARM Adjustment**

The Mortgagee must determine a new monthly payment each time there is an interest rate adjustment. The Mortgagee must calculate the portion of the monthly payment attributable to P&I by:

- determining the amount necessary to fully amortize the unpaid principal balance for the remaining term of the Mortgage;
- crediting all eligible prepayments; and
- not debiting any delinquency.

To calculate the monthly installment, the Mortgagee must use the scheduled principal balance that would be due on the Change Date but reduced by the amount of any prepayments made to the principal.

All ARM adjustments affect interest rates only; negative amortization is not permitted.

#### **iv. ARM Adjustment Notices**

##### **(A) Standard**

At least annually and before any adjustment to a Borrower's monthly payment may occur, the Mortgagee must provide written notification regarding the adjustment.



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#### A. Title II Insured Housing Programs Forward Mortgages

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##### (1) Time Frame

###### (a) For Mortgages Closed Before January 10, 2015

If the notice follows an adjustment in the monthly payment, the Mortgagee must provide the Borrower notice:

- at least 25 Days before any adjustment; or
- at least 30 Days before the adjustment if the mortgage agreement contains a provision stating that 30-Day requirement.

###### (b) For Mortgages Closed On or After January 10, 2015

The Mortgagee must provide notice in compliance with the time frames set out in TILA.

##### (2) Required ARM Notice Content

The content of the Adjustment Notice must advise the Borrower of:

- the new mortgage interest rate;
- the amount of the new monthly payment;
- the current index interest rate value; and
- how the payment adjustment was calculated.

##### (3) Sending the ARM Adjustment Notice

The Mortgagee must send the Adjustment Notice to the Borrower:

- by Certified Mail, return receipt requested; or
- by first-class mail to all property owners identified on its records.

##### (B) Required Documentation

The Mortgagee must retain the following in the servicing file:

- evidence that timely notice was sent to the Borrower; and
- annual adjustment computations for the mortgage term.

##### (C) Failure to Provide the ARM Adjustment Notice

If the Mortgagee fails to provide notice to the Borrower for more than one year, then the Mortgagee must determine an adjusted interest rate for each omitted year, in order to determine the adjusted interest rates for subsequent years, and perform the following:

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##### (1) Interest Rate Increase

If the Mortgagee's calculations result in an increase of the interest rate, the Mortgagee has forfeited their right to collect the increased amount and the Borrowers are relieved from the obligation to pay the increased payment amount.

##### (2) Interest Rate Decrease

If the Mortgagee's calculations result in a decrease of the interest rate, the Mortgagee must refund the excess, plus interest from the date of the excess payment to the date of repayment, at a rate equal to the sum of the margin and index in effect on the Change Date.

The Mortgagee must first apply any refund to any existing delinquency, and if excess funds remain, the Mortgagee must, at the Borrower's request:

- provide the Borrower with a cash refund; or
- apply the remaining excess to the unpaid principal balance of the Mortgage.

##### (D) Errors in the ARM Adjustment Notice

HUD requires that errors be corrected if:

- the Mortgagee miscalculates the interest rate and/or the monthly payment; and
- the errors are reflected in the notice.

##### v. Commencement of Monthly Payment after ARM Adjustment

After the Mortgagee gives the Borrower proper notice of the adjustment, the Borrower begins paying the new monthly payment 30 Days after the Change Date.

##### vi. Assumptions of ARMs

In addition to sending the applicable [Notice to Homeowner, Release of Personal Liability](#) in [Assumptions](#), the Mortgagee must attach a copy of the original ARM Disclosure Statement that established the index, margin, and the Change Date.

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##### b. Assumptions

##### i. Assumability of FHA-Insured Mortgages

All FHA-insured Mortgages are assumable. The Mortgagee must not impose, agree to, or enforce legal restrictions on conveyances or assumptions after closing except when:

- specifically permitted by HUD regulations; or
- the restriction had been specified in a junior lien granted to the Mortgagee after settlement.

The Mortgagee must review the mortgage documents to determine what restrictions have been placed on the Mortgage.

##### ii. Notice to Homeowner

The Mortgagee must send the applicable [Notice to Homeowner: Release of Personal Liability](#) to:

- all applicants for FHA-insured Mortgages, before settlement; and
- sellers or buyers who request information on HUD's creditworthiness review criteria or procedures for assumptions or releases from personal liability.

##### iii. Fees for Assumptions

##### (A) Allowable Charges Separate from Assumption Processing Fees

The Mortgagee may charge the assuming Borrower reasonable and customary fees not to exceed the actual costs for third party expenses incurred in connection with assumption processing:

- non-refundable fees for credit reports and verifications of employment; and
- up to \$45.00 for fees for the preparation and execution of release of liability forms (form [HUD-92210.1, Approval of Purchaser and Release of Seller](#)), where a Borrower requests an executed release of liability form as evidence that the Borrower was released during a previous creditworthiness review.

##### (B) Refund of Assumption Processing Fees

In the event a Mortgage is not assumed, Mortgagees must refund one-half of its processing fees if the assumptor's credit is approved, but assumption does not occur for reasons beyond the control of the assumptor.

##### (C) Change of Hazard Insurance

The Mortgagee may not assess a fee for processing the assumptor's request to change hazard insurance coverage when the existing policy has not yet expired.

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#### **(D) Section 143 of the Internal Revenue Code of 1986**

The Mortgagee must not charge the Borrower any additional fees for ensuring that assumptions of mortgage revenue bond Mortgages comply with requirements of the IRC.

#### **iv. Notification to HUD of Changes**

The Mortgagee must notify HUD via [FHAC](#) of assumptions:

- within 15 Days of any change of Borrower; or
- within 15 Days of the date the Mortgagee receives actual or constructive knowledge of the transfer of ownership.

#### **v. Payment of Partial Claim Due to Assumption**

When the Borrower no longer owns the Property, the Partial Claim becomes due and payable.

At the time of the assumption, the Mortgagee must acquire an official Partial Claim payoff letter from [HUD's Servicing Contractor](#).

#### **vi. Exercise of Due-on-Sale Clause**

When a prohibited sale or transfer of the Property occurs, the Mortgagee must enforce the due-on-sale clause by:

- requesting approval from the [NSC](#) to accelerate the Mortgage, provided that acceleration is permitted by law; and
- accelerating the Mortgage if approval is granted.

#### **vii. Acceleration of the Mortgage**

##### **(A) Requests for Acceleration**

The Mortgagee may request approval from the NSC to accelerate Mortgages for assumptions made:

- without credit approval; or
- where HUD assumption requirements are not met and the Borrower cannot or will not comply with HUD's requirements at the time the assumption is discovered.

##### **(B) Acceleration not Permitted**

The Mortgagee may not accelerate for the assumptions when:

- acceleration for assumption without credit approval is prohibited by state law;
- the seller retains an ownership interest in the Property; or
- the transfer is by [devise or descent](#) (with or without a will).

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##### viii. Communication with Borrowers Regarding Assumptions

Upon any inquiry by a seller regarding HUD's assumption requirements or upon learning that an assumption has occurred, the Mortgagee must:

- attempt to obtain the forwarding address of the selling Borrower;
- advise the selling Borrower to update the mailing address as needed; and
- advise the selling Borrower that any existing PACE obligation that remains with the Property must be fully disclosed to the buyer in accordance with applicable law (state and local) and made part of the sales contract.

##### ix. Reporting of Defaults on Assumed Mortgages to Consumer Reporting Agencies

If an assumed Mortgage goes into Default, the Mortgagee must not report these Defaults to consumer reporting agencies for former Borrowers, whether those Borrowers remain legally liable for the mortgage debt or have been released from liability. The Mortgagee must notify any Borrowers that remain liable for the mortgage debt that the assumed Mortgage is in Default.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Hawaiian Home Lands Mortgages (Section 247 Mortgages)

##### c. Hawaiian Home Lands Mortgages (Section 247 Mortgages)

##### i. Reporting of Delinquent Mortgages

###### (A) Standard

The Mortgagee must report in SFDMS the [Delinquency/Default Status Codes](#) that accurately reflect the stage of delinquency or mortgagee action.

In addition, the Mortgagee must notify the State of Hawaii Department of Hawaiian Home Lands (DHHL) each month of:

- which Section 247 insured Mortgages on Leaseholds of Hawaiian Home Lands are 30 or more Days Delinquent on the last Day of the month, and
- the status of Mortgages that were reported as Delinquent the previous month.

###### (B) Contact Information for Submission of Reports

The Mortgagee may use form [HUD-92068-A](#), *Monthly Delinquent Loan Report*, completed in [FHAC](#), to meet its DHHL reporting requirements. The Mortgagee must submit the information by the fifth business day following the close of each month to:

Department of Hawaiian Home Lands  
Loan Services Branch  
P.O. Box 1879  
Honolulu, Hawaii 96805  
Attn: FHA Insured Section 247

###### (C) HUD's Loss Mitigation Program

The Mortgagee may offer the following Loss Mitigation Options to eligible Borrowers with Section 247 Mortgages:

- SFB-Unemployment; and
- FHA-HAMP Loan Modifications.

If the resultant front-end ratio of the modified Mortgage is greater than 40 percent, the Borrower is not eligible for loss mitigation.

Due to Hawaii state law prohibitions on the placement of junior liens on Properties secured by Section 247 Mortgages, the Mortgagee must not use Partial Claims with Section 247 Mortgages.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Hawaiian Home Lands Mortgages (Section 247 Mortgages)

##### ii. Assignment of Section 247 Assignments

###### (A) Standard

The Mortgagee may assign the Delinquent insured Mortgage and Note to HUD if all of the following conditions are met:

- the Mortgage has been in Default for 180 Days or more;
- when the Mortgage is 90 Days Delinquent, the Mortgagee has notified DHHL of the Default in writing;
- the Mortgagee has attempted a face-to-face interview with the Borrower at least 30 Days before the application for assignment is submitted, unless exempt; and
- the Mortgagee has evaluated the Borrower for loss mitigation in accordance with HUD guidance.

The Mortgagee must not foreclose on or approve a PFS or DIL transaction on Section 247 Mortgages; the only disposition option available to the Mortgagee is assignment.

###### (B) Endorsement on Original Note

To assign the Note to HUD, an authorized agent of the Mortgagee must sign the following endorsement on the original Note: "All right, title and interest of the undersigned to the within credit instrument is hereby assigned to the Secretary of Housing and Urban Development of Washington, D.C., their successors and assigns."

###### (C) Lost Note Affidavit

If the original Note cannot be located, the Mortgagee must submit the [Lost Note Affidavit](#).

##### iii. Submission of Title Evidence Package and Servicing Records for Assignment

###### (A) Standard

At the time of the filing of its [claim](#) for insurance benefits, the Mortgagee must submit the title evidence and servicing records package to HUD at:

Associate Regional Counsel - Hawaii  
Office General Counsel  
U.S. Department of HUD  
611 W. Sixth Street, 13th Floor  
Los Angeles, CA 90017

The Mortgagee must include with its title evidence package:

- a transmittal letter; and
- servicing records.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Hawaiian Home Lands Mortgages (Section 247 Mortgages)

##### (1) Transmittal Letter

The Mortgagee must include with its assignment package a transmittal letter indicating the name and telephone number of the person HUD is to contact for more information about the submission.

##### (2) Title Evidence Package

The Mortgagee must ensure that the Title Evidence Package contains all of the documents listed in the checklist below:

- Title Evidence Package Checklist;
- original Note endorsed to HUD in the format required by form [HUD-27011](#), Part A;
- original Mortgage with evidence of recordation by DHHL;
- recorded Consent to Mortgage signed by DHHL;
- recorded intervening assignments of Mortgage, if any;
- recorded Assignment of Mortgage (AOM) to HUD with required warranty;
- copy of Borrower's Homestead Lease and recorded Lease Assignments and Amendments, if any; and
- recorded Mortgage Insurance Program Rider to the Homestead Lease.

##### (3) Servicing Records

The Mortgagee must submit to HUD the following servicing records:

- copy of form [HUD-27011](#);
- copy of Title Submission Certification;
- proof of request to endorse fire policy;
- mortgage history commencing from date of first payment;
- copy of signed Management Review Checklist, plus all supporting servicing records;
- initial DHHL notification letter; and
- evidence of loss mitigation efforts.

##### (B) Field Office Counsel Review

After review of the title documents, Honolulu Field Office Counsel will either:

- issue a title approval letter to the submitting Mortgagee and forward the assignment package to the NSC for servicing review and final approval; or
- if the title documents contain deficiencies, issue a title deficiency letter providing the Mortgagee 30 Days to cure such deficiencies.



### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Hawaiian Home Lands Mortgages (Section 247 Mortgages)

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##### iv. Reconveyance to Mortgagee

If the claim has been paid and HUD does not accept assignment of the Mortgage and Note, HUD will:

- reassign the Mortgage to the Mortgagee, and
- request repayment of the claim amount.

If the claim has not yet been paid, HUD will return the submitted documents to the Mortgagee.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Insured Mortgages on Indian Land (Section 248 Mortgages)

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##### d. Insured Mortgages on Indian Land (Section 248 Mortgages)

###### i. Face-to-Face Interviews

The Mortgagee must have a face-to-face interview with the Borrower or make a reasonable effort to arrange a face-to-face interview no later than the 61<sup>st</sup> Day of delinquency, unless exempt under the [Face-to-Face Meetings Not Required](#) section.

###### (A) Face-to-Face Meetings Not Required

The Mortgagee is not required to conduct a face-to-face interview if:

- the Borrower does not live in the mortgaged Property;
- the Borrower has clearly indicated that they will not cooperate with a face-to-face interview; or
- the Borrower's payment is current due to an agreed-upon repayment plan or Forbearance Plan.

###### (B) Reasonable Effort in Arranging a Face-to-Face Interview

###### (1) Standard

In addition to the [reasonable effort standards](#) for all FHA-insured Mortgagees, the Mortgagee must make at least one telephone call to the Borrower to arrange a face-to-face interview.

###### (2) Required Documentation

The Mortgagee must document in its servicing file all attempts in contacting the Borrower to arrange a face-to-face interview.

###### ii. Information Provided to the Borrower

###### (A) Standard

The Mortgagee must inform the Borrower of the following:

- that HUD will make information regarding the status and payment history of the Borrower's Mortgage available to local credit bureaus and prospective creditors;
- other available mortgage assistance, if any; and
- the names and contact information of HUD officials to whom further communications may be addressed.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Insured Mortgages on Indian Land (Section 248 Mortgages)

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##### 1 (B) Required Documentation

2 The Mortgagee must note in its servicing file when and how the Borrower was  
3 informed of the information above.

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### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Section 222 Mortgages

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##### e. Section 222 Mortgages

Authority for Mortgages insured under Section 222 of the National Housing Act was repealed on July 30, 2008. The following policies apply for existing Section 222 Mortgages, for which Mortgage Insurance Premiums (MIP) are paid by the servicemember-Borrower's branch of the military service until the servicemember's eligibility is terminated.

##### i. Requirements for Section 222 Mortgages

###### (A) Military Branch Responsibility

The military branch is responsible for payment of MIP on a Section 222 Mortgage when the Borrower is:

- a certified servicemember at the time of application; and
- the owner of the Property at the time of FHA endorsement.

###### (B) Establishing Eligibility

The servicemember-Borrower must submit the original and two copies of a written certification of a servicemember's eligibility, issued by the servicemember's commanding or personnel officer, with their application for mortgage insurance under Section 222. The respective service branch determines benefits eligibility.

##### ii. Sale of a Property Covered by a Section 222 Mortgage

When a servicemember-Borrower sells the mortgaged Property, the Mortgagee must complete a Mortgage Record Change in [FHAC](#).

###### (A) Sale of Mortgaged Property to Another Eligible Servicemember

If a mortgaged Property is sold to another eligible servicemember who assumes the Section 222 Mortgage, the Mortgagee must request from the assumptor written certification from their service branch of their eligibility for a Section 222 Mortgage.

If the Mortgagee fails to provide this certification to HUD when requesting insurance, HUD will hold the Mortgagee, and not the service branch, responsible for payment of MIP. The Mortgagee should continue to collect premiums from the servicemember-Borrower and pay the premiums to FHA.

###### (B) Collection of MIP from Servicemember Assumptor

When a mortgaged Property is sold to another eligible servicemember who will assume the Section 222 Mortgage, the Mortgagee must continue to collect premiums from the assumptor until advised by FHA that the service branch will be responsible for future premiums.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Section 222 Mortgages

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If the Mortgagee has been paying the MIP as a result of prior termination of the service branch's responsibility for payment of premiums, the Mortgagee must continue to collect premiums from the servicemember-Borrower and pay the premiums to FHA.

#### iii. MIP Payments upon Notice of Termination

Under Section 222, HUD does not require the Mortgagee to collect MIP from the Borrower or to remit premiums to FHA until advised by FHA that the service branch will no longer pay the premiums.

When FHA is notified that the mortgaged Property has been sold or that the servicemember has been discharged, retired, or has died, FHA will:

- request confirmation from the service branch of the termination of MIP; and
- notify the Mortgagee to begin collecting MIP from the servicemember-Borrower.

#### iv. Continued Payment of MIP by Service Branch When Servicemember Dies on Active Duty

The service branch is responsible for determining continued eligibility of servicemember-Borrowers. If a servicemember-Borrower dies while on Active Duty and is survived by a spouse, the service branch will be responsible for the following:

- continuing to pay MIP on the Mortgage until two years after the servicemember's death or until the spouse disposes of the Property, whichever occurs first;
- notifying FHA when eligibility terminates; and
- paying MIP until confirmation of the termination is received by the FHA Comptroller. FHA will notify the Mortgagee of its responsibility for payment of the MIP.

#### v. Loss Mitigation for Section 222 Mortgages

The Mortgagee must evaluate all applicable Loss Mitigation Options for Section 222 Mortgages.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Good Neighbor Next Door

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##### f. Good Neighbor Next Door

##### i. Owner-Occupancy Term

The Good Neighbor Next Door (GNND) participant must live in the Property as their sole residence for an owner-occupancy term of 36 months, beginning on one of the following dates:

- 30 Days after closing if the home requires no more than \$10,000 in repairs before occupancy;
- 90 Days after closing if the home requires more than \$10,000, but not more than \$20,000 in repairs; or
- 180 Days after closing if the home requires more than \$20,000 in repairs prior to occupancy.

##### (A) Annual Certification

##### (1) Standard

GNND participants must certify on [form HUD-9549-D](#), *Good Neighbor Next Door Sales Program*, every year of the owner-occupancy term that they are living in the Property.

HUD's Loan Servicing Contractor will mail form HUD-9549-D to the GNND participant. The GNND must sign, date, and return the form according to the instructions in the letter.

##### (2) Failure to Return Certification

If the GNND participant fails to complete and return the annual certification, HUD will take action to determine whether the GNND participant still meets program requirements. These actions include, but are not limited to:

- referral to an investigator, who may perform an on-site visit to verify the occupancy of the Property; and
- referral to HUD's Office of Inspector General (OIG) for further investigation and possible prosecution.

##### (B) Term Interruption Requests

When the GNND participant requires an interruption to the owner-occupancy term, the Borrower may request approval for a term interruption from HUD.

The GNND participant must submit a written and signed request at least 30 Days before the anticipated interruption to HUD's [Servicing Contractor](#). The request must include the following information:

- the reason(s) why the interruption is necessary;
- the dates of the intended interruption; and

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Good Neighbor Next Door

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- a certification that:
  - the GNND participant is not abandoning the home as their permanent residence; and
  - the GNND participant will resume occupancy of the home upon the conclusion of the interruption and complete the remainder of the 36-month owner-occupancy term.

#### **(C) Active Duty Military Service**

Eligible GNND program participants who are also military service members protected by the SCRA are not required to submit their written request to HUD 30 Days in advance of an anticipated interruption, but must submit their written request as soon as practicable upon learning of a potential interruption.

HUD may grant exceptions to the occupancy requirement for participants who are called to Active Duty service. These participants must notify the NSC when Active Duty military service would require temporary relocation outside of the commuting area of the Property purchased under the GNND program.

#### **(D) Failure to Complete Owner-Occupancy Term**

If the GNND participant sells their home or stops living in the home as their sole residence prior to the expiration of the owner-occupancy term, they will owe HUD the amount due on the second Mortgage as of the date the Property is either sold or vacated.

### **ii. Second Mortgage and Note Servicing**

HUD's [Servicing Contractor](#) is responsible for the servicing of GNND second Mortgages.

GNND Participants must submit requests for subordinations, pay-off amounts, mortgage releases, or other servicing information to HUD's Servicing Contractor.

#### **(A) Subordinations**

To request subordination of a GNND Mortgage, the GNND participant, or the Closing Agent responsible for closing the new Mortgage must:

- contact HUD's Loan Servicing Contractor to receive a Subordination Information Sheet; and
- submit the required documentation, as listed in the Subordination Information Sheet, to HUD's Loan Servicing Contractor.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Good Neighbor Next Door

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##### (B) Payoffs

To pay off a GNND Mortgage before the expiration of the owner-occupancy term, the GNND participant must submit to HUD's Loan Servicing Contractor a request for a Payoff, including the following information:

- GNND participant's name;
- full property address;
- estimated date of Payoff;
- name, address, telephone number, and return fax number of the Entity requesting the Payoff; and
- signed permission of the GNND participant to collect this information.

##### (C) Releases

At the end of the required owner-occupancy term, HUD will release the GNND second Mortgage as long as all of the following conditions are met:

- The GNND participant has completed and returned the required annual certifications.
- The GNND participant is not currently under investigation by OIG.
- The GNND participant is in compliance with all GNND regulations.

HUD's Loan Servicing Contractor will prepare this release and file the mortgage satisfaction with the GNND participant's local county recorder's office.



### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - HOPE for Homeowners

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##### g. HOPE for Homeowners

The Housing and Economic Recovery Act of 2008 amends the National Housing Act to authorize the temporary Homeownership and Opportunity for People Everywhere (HOPE) for Homeowners Program (also referred to as the H4H Program). Under the program, a Borrower facing difficulty paying their Mortgage was eligible to refinance into an affordable FHA-insured Mortgage. The H4H Program was effective for endorsements on or after October 1, 2008, through September 30, 2011.

##### i. HUD Contact

Mortgagees should contact HUD's [Servicing Contractor](#) for questions related to servicing or satisfaction of H4H Exit Premium Mortgages (EPM).

##### ii. Annual Premium

The Mortgagee must collect the annual premium at 0.75 percent of the Base Loan Amount. The Mortgagee must follow standard FHA guidelines for the cancellation of the annual premium.

##### iii. Voluntary Termination of Mortgage Insurance

The Borrower and Mortgagee may mutually request termination of mortgage insurance. The Borrower will not receive a refund of any UFMIP received by HUD and will remain obligated for the exit premium and appreciation Mortgages.

##### iv. Sale and Payoff

Upon sale or other disposition of the Property securing an H4H Mortgage, the Borrower must satisfy HUD's equity interest, if not already satisfied through refinance. HUD is entitled to its respective percentage of the initial equity amount as stated in the EPM, even if there are no net proceeds or if net proceeds are negative.

Upon receipt of a payoff request, HUD's [Servicing Contractor](#) will calculate the payoff amount for its equity interest and issue a payoff demand to the Closing Agent.

##### v. Refinancing

HUD will permit the refinancing of an H4H Mortgage subject to the requirements established in this section. In the event of any refinance of the H4H Mortgage, the Borrower must pay to HUD its full equity interest as stated in the EPM.

HUD will permit the refinancing into another conventional loan product no earlier than 12 months from the date of closing on the H4H Mortgage. The Borrower may refinance if:

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - HOPE for Homeowners

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- the refinance results in a 30-year amortizing fixed rate Mortgage with a Principal and Interest (P&I) payment that is lower than the P&I payment due on the existing H4H Mortgage;
- the proceeds from the refinance are sufficient to pay off the percent of initial equity due to HUD; and
- the cash received by or on behalf of the Borrower is limited to the Borrower's applicable percentage of initial equity created by the H4H Mortgage, as stated in the EPM, any earned equity the Borrower has accrued, and any appreciation.

#### vi. Default and Loss Mitigation

The Mortgagee may utilize HUD's Loss Mitigation Program for H4H Mortgages, subject to the following special considerations.

##### (A) FHA-HAMP Loan Modifications

HUD will subordinate the EPM to the modification of an H4H Mortgage completed in accordance with HUD's Loss Mitigation Program.

##### (B) FHA-HAMP Partial Claim

For a Partial Claim Note, HUD does not require subordination of the EPM.

##### (C) Pre-Foreclosure Sale

The Mortgagee must include the total dollar amount of the EPM in the total debt calculation for the negative equity ratio calculations.

##### (D) Deed-in-Lieu

HUD will accept a [DIL](#) subject to the EPM lien.

#### vii. Exit Premium

##### (A) Definition

Initial equity is the lesser of:

- the appraised value at the time of the H4H loan origination less the original principal balance on the H4H Mortgage; or
- the outstanding amount due under all existing mortgages less the original principal balance on the H4H Mortgage.

##### (B) Standard

In the event of refinance, sale, or other disposition, HUD is entitled to receive the following percentage of initial equity:

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - HOPE for Homeowners

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Year	% of equity to be paid to FHA
During Year 1	100% of equity
During Year 2	90% of equity
During Year 3	80% of equity
During Year 4	70% of equity
During Year 5	60% of equity
After Year 5	50% of equity

1

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Nehemiah Housing Opportunity Grants Program

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##### h. Nehemiah Housing Opportunity Grants Program

Title VI of the Housing and Community Development Act of 1987 established the Nehemiah Housing Opportunity Grants Program (NHOP), which authorized HUD to make grants to nonprofit organizations enabling them to provide Mortgages to families purchasing homes constructed or substantially rehabilitated in accordance with a HUD-approved program. The program was funded by Congress in 1989, 1990, and 1991. It is no longer an active program as grant funds were exhausted in April 1991. HUD's [Servicing Contractor](#) handles the satisfaction of liens still outstanding from this program.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Servicing FHA-Insured Mortgages for Servicemember-Borrowers

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##### i. Servicing FHA-Insured Mortgages for Servicemember-Borrowers

##### i. Servicemembers Civil Relief Act

The [Servicemembers Civil Relief Act of 2003](#) (SCRA) as amended by [Public Law 108-189](#), effective December 19, 2003, provides legal protections and debt relief for persons in Active Duty military service. The following protections apply to the servicing of FHA-insured Mortgages:

- mortgage relief;
- termination of leases;
- protection from eviction;
- 6 percent cap on interest rates;
- stays of proceedings; and
- reopening Default Judgments.

##### (A) Relief Provisions for the Military

SCRA provides legal protections and debt relief for persons in Active Duty military service the criteria for which are established in [50 U.S.C. App. § 3911](#). Dependents of servicemembers are entitled to protection in limited situations. “Dependents” is also defined in [50 U.S.C. App. § 3911](#).

##### (B) Obligations and/or Liabilities Prior to Entering into Active Military Service

##### (1) Interest Rate Cap

##### (a) Standard

Obligations or liabilities incurred by a servicemember and/or servicemember's spouse jointly before entering into active military service must not bear interest at a rate in excess of 6 percent per year during the period of military service and one year thereafter (unless superseded by updates to the SCRA Act), in the case of an obligation or liability consisting of a Mortgage, trust deed, or other security in the nature of a Mortgage.

##### (b) Required Documentation

The Mortgagee must apply the interest rate cap if it receives from the servicemember the documents listed below no later than 180 Days after the date of the servicemember's termination or release from military service:

- a written notice;
- a copy of military orders calling the servicemember to military service; and
- orders further extending military service, if any.

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Servicing FHA-Insured Mortgages for Servicemember-Borrowers

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##### (c) Mortgagee Implementation

The Mortgagee must limit interest to 6 percent per year effective the date on which the servicemember is called to military service. Only a court may grant exceptions if the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by being in military service.

##### (2) Reduction of Monthly Payments

When interest must be reduced to 6 percent on an FHA-insured Mortgage due to SCRA, the Mortgagee may calculate interest due for the period of Active Duty on a per diem basis or permit the lower interest rate for the entire first and last months of service.

##### (a) Mortgagee is Notified of SCRA Applicability

Where the servicemember notifies the Mortgagee of their eligibility for SCRA protection, the Mortgagee must:

- advise the servicemember or representative of the adjusted amount due;
- provide adjusted coupons or billings; and
- ensure reduced payments are not returned as insufficient.

##### (b) Mortgagee is Not Notified of SCRA Applicability

Where the servicemember does not notify the Mortgagee of their eligibility for SCRA protection and submits a reduced payment, the Mortgagee must:

- attempt to contact the Borrower or representative to determine whether the Borrower is on Active Duty; and
- return insufficient payment if appropriate explanation is not provided and otherwise in compliance with HUD guidance.

##### (C) Verification of Military Service

The Mortgagee may request a statement of military service from the U.S. Department of Defense's [Servicemembers Civil Relief Act \(SCRA\) website](#).

#### ii. Postponement of Foreclosure

##### (A) Reasonable Diligence Time Frame Calculation

When calculating deadlines to commence foreclosure or acquire Property by other means, the Mortgagee may exclude the period of time when the Borrower is in Active Duty military service. HUD does not consider postponement or delay in initiating a

### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Servicing FHA-Insured Mortgages for Servicemember-Borrowers

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1 foreclosure while the Borrower is Active Duty military service a failure to exercise  
2 reasonable diligence.

3 The Mortgagee may voluntarily withhold foreclosure with or without applying Partial  
4 Payments that advance the date of Default.

#### 5 **(B) Required Documentation**

6 The Mortgagee must document any delays associated with compliance with the  
7 SCRA in the Claim Review File.

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### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

#### 3. Programs and Products [This draft section does not include updates from Mortgagee Letter 2020-22, FHA's COVID-19 Loss Mitigation Options] - Section 235 Mortgages

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##### j. Section 235 Mortgages

Effective May 4, 2015, HUD removed the regulations for its Section 235 Program, which authorized HUD to provide mortgage subsidy payments to Mortgagees to assist lower-income families who were unable to meet the credit requirements generally applicable to FHA mortgage insurance programs. Authority to insure new Mortgages under Section 235 expired October 1, 1989. To the extent that any Section 235 mortgages remain in existence, or second mortgages for the recapture of subsidy payment pursuant to HUD's regulations governing the Section 235 Program, the removal of these regulations does not affect the requirements for transactions entered into when Section 235 Program regulations were in effect. A Borrower with an existing Section 235 Mortgage may still refinance the Mortgage.

Section 235 Mortgages have additional servicing requirements due to the Assistance Payment Contract. The Mortgagee must continue servicing Section 235 Mortgages in accordance with published guidance, preserved here verbatim. Mortgagees should direct questions regarding Section 235 Mortgage servicing to the [NSC](#).

##### i. Section 235 Mortgages

Formerly HUD Handbook 4330.1, REV-5, Chapter 10

**10-1 GENERAL (24 CFR 235).** Under the Section 235 program, HUD assists mortgagors in making their monthly mortgage payments by paying directly to the mortgagee a portion of the mortgagor's monthly payment as long as the mortgagor remains eligible for subsidy under this program.

Servicing of Section 235 mortgages is generally the same as that described in the previous chapters of this handbook for mortgages insured under other HUD programs, except this program has added requirements due to the assistance payments contract (Subpart C of 24 CFR 235).

A. Mortgages Subject To Recapture (24 CFR, Part 235, Subpart C). Pursuant to a firm commitment issued on or after May 27, 1981, all or part of the assistance payments is subject to recapture under certain circumstances. (Recaptures and mortgagees' responsibilities with respect to recaptures are discussed in detail in Chapter 11).

B. Reactivation Of Section 235. The Appropriations Act of 1984 reactivated the Section 235 program in accordance with Section 226 of the Housing and Urban Rural Recovery Act (HURRA) of 1983. The provisions of the reactivated program (which is known as Section 235 Revised/Recapture/10), are discussed in Paragraph 10-36.

**10-2 CONTRACT FOR MONTHLY ASSISTANCE PAYMENTS (24 CFR 235).** The terms and conditions of the assistance payment contract are contained in Subpart C of Part 235 of the HUD regulations. The issuance of the Mortgage Insurance Certificate (MIC), Form HUD-59100, to the HUD-approved mortgagee incorporates these provisions by reference to the contract between HUD and the mortgagee.



### III. SERVICING AND LOSS MITIGATION

#### A. Title II Insured Housing Programs Forward Mortgages

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1 A. What Constitutes Execution Of The Contract (24 CFR 235.310). Issuance of form HUD-  
2 59100 constitutes execution of the contract for assistance payments with respect to that  
3 particular mortgage. The date of endorsement of the MIC does not affect the term of the  
4 contract.

5 B. Date Contract Term Begins. The term of the contract begins on either the date of  
6 disbursement of the mortgage proceeds or the date the mortgagor occupies the property,  
7 whichever occurs later.

8 NOTE: "Date of disbursement" in this instance means the date the funds escrowed to assure  
9 completion (in accordance with Form HUD-92300, Mortgagee's Assurance of Completion),  
10 have been disbursed.

11 C. Date Contract Term Ends (24 CFR 235.345). The term of the contract ends on the first  
12 day of the month following the occurrence of one of the events listed under Paragraph  
13 10-19.

14 D. Definitions (24 CFR 235.5). Listed below are definitions of some of the terms used in  
15 this chapter as they pertain to the Section 235 program.

16 1. "Family" or "Household" (24 CFR 235.5). These terms mean:

- 17 a. a pregnant woman, or two or more persons related by blood, marriage, or  
18 operation of law, who occupy the same unit;  
19 b. a handicapped person who has a physical or mental impairment which is expected  
20 to be of a continued duration and which impedes his/her ability to live  
21 independently unless suitable housing is available; or  
22 c. a single person, 62 years of age or older.

23 2. "Adjusted Annual Income" (24 CFR 235.5). This term means the annual family  
24 income remaining after making certain exclusions from gross annual income as  
25 shown in 24 CFR 235. 5(a)(1), (2) and (3).

26 3. "Gross Annual Income" (24 CFR 235.5). This term means the total income (i.e.,  
27 before any adjustments, tax deductions or any other deductions), received by all  
28 members of the mortgagor's household for those items listed in Paragraph 10-9.

29 4. "Minor" (24 CFR 235.3). This term means a person under the age of 21 but shall not  
30 include a mortgagor or the spouse of a mortgagor.

31 5. "Cooperative Member" (24 CFR 235. 325). This term means a person who is a  
32 member of a cooperative association which operates a housing project financed with a  
33 mortgage insured under Sections 213 or 221 of the National Housing Act and meets  
34 the conditions set forth under 24 CFR 235.325 and 235 330.

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6. "Active Contract". This term means a Section 235 assistance payment contract that is not currently suspended or terminated.

7. "Recertification of Family Income and Composition". This term means the process for determining whether a mortgagor's household;

a. continues to qualify for the Section 235 assistance now being received; and/or

b. is eligible for more or less assistance than is currently being received.

**10-3 CONTRACT FOR MONTHLY ASSISTANCE PAYMENTS UNDER THE HOUSING AND URBAN RURAL RECOVERY ACT OF 1983.** The Section 235 Revised/Recapture/10 Program provides for the following:

A. an assistance payments contract executed by the mortgagee and HUD which includes the "Notice To Buyer", signed by the mortgagors; and

B. the mortgagee must submit to the local HUD Field Office having jurisdiction over the mortgage the completed and executed contract along with the closing package at the time of insurance endorsement. (HUD will execute the contract and return it to the mortgagee with the Mortgage Insurance Certificate.)

**10-4 CONTINUING ELIGIBILITY FOR ASSISTANCE.** Once the assistance payments contract has been executed and the mortgage insured, many of the initial eligibility requirements (such as owning other property, family size, etc.,) no longer restrict the mortgagor's continuing eligibility for assistance.

A. Requirements To Continue Receiving Assistance. In order to continue receiving assistance payments, the mortgagor must meet all four of the following conditions:

1. Owner-occupancy Continues. Must be a mortgagor (as described in 24 CFR 235.315) or a cooperative member (as described in 24 CFR 235.325) and live in the mortgaged property;

a. Co-mortgagors. Where there are co-mortgagors, this requirement will be satisfied as long as one co-mortgagor lives in the mortgaged property.

b. Absentee Occupant. If a mortgagor is away from the mortgaged property for a period up to one year this requirement will be satisfied if the absence is due to circumstances beyond his/her control and the mortgagor has taken no action which would indicate this property is no longer his/her primary residence. Each case must be decided on its own merit as to whether the circumstances meet the occupancy requirement. If additional guidance is needed, the HUD Field Office having jurisdiction over the mortgaged property should be contacted. Examples of an "absentee occupant" may include, but not necessarily be limited to, a member of the armed forces, and/or a hospitalized mortgagor.

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NOTE: Assistance payments must be suspended where the mortgagor:

- (1) actually collects rent for the mortgaged property;
- (2) vacates the mortgaged property for any reason other than for a temporary absence;
- (3) offers the property for rent or sale;
- (4) fails to make the mortgage payments after vacating the property;
- (5) rents another property which the mortgagor is occupying for any reason other than for a temporary absence (as described in (1) - (4) above) from his mortgaged property;
- (6) purchases and occupies another property (mortgagor or co-mortgagor)

c. Appointed Trustee/Guardian. In the event of the death of the mortgagor and a trustee/ guardian was appointed as the only survivors were minors, this requirement may be satisfied if the appointed trustee/guardian lives in the mortgaged property with the surviving minors.

2. Contract Remains Active. Must be under an assistance payments contract that has not been suspended or terminated;

3. Meets Income Requirements. Mortgagor has insufficient income to make the full monthly mortgage payment with 20 or 28 percent of income depending on the firm commitment date of the mortgage; and

NOTE: The 20 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or before October 26, 1984. The 28 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or after October 27, 1984.

4. Recertifies As Required. Recertifies as to occupancy, employment, family composition, and income at least annually and at such other times as required by HUD regulations 24 CFR 235.350.

B. Basis Of Assistance Calculation. If the four conditions cited in Paragraph A above are met, only the amount of assistance remains to be calculated. This calculation is based on periodic recertifications of income, family composition, occupancy and employment as discussed in Paragraph 10-5.

C. Disclosure And Verification Of Social Security Number (SSN). The disclosure and verification of the SSN is an explicit condition of continued eligibility for Section 235 assistance. All mortgagors (and members of their households six years of age and older) are required to disclose and verify complete and accurate SSNs in connection with any recertification.

D. Verification Of The SSN Is A One-time Requirement. If a mortgagor provides the mortgagee with documentation to verify the SSN at the time of an annual recertification

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(October 1990), it is not necessary to provide the documentation to verify the SSN for any subsequent recertifications. However, disclosure of the SSN must be provided at the time of each recertification. Mortgagees must advise mortgagors of the requirements in writing.

#### E. Documentation Requirements.

1. Documentation is required for each SSN disclosed. To document the SSN, all individuals should furnish a copy of a valid Social Security Card (SSC) issued by the Social Security Administration of the Department of Health and Human Services. (The SSN has nine digits separated by hyphens as follows: 000-00-0000).

2. In those cases where the individual is unable to provide a copy of a valid SSC, mortgagees may accept copies of any two of the following documents which would contain the SSN and the individual's identity:

- a. A drivers license.
- b. An identification card issued by a Federal, state or local agency.
- c. An identification card issued by an employer or trade union.
- d. Earnings statements or payroll stubs.
- e. Bank statements or personal checks.
- f. Internal Revenue Service (IRS) Form 1099.
- g. Unemployment benefit letter.
- h. Retirement benefit letter.
- i. Life insurance policies.
- j. Court records: such as marriage and divorce judgments or bankruptcy records.
- k. Other documents that the mortgagee determines adequate evidence of a valid SSN.

#### F. Individuals who have applied for legalization under the Immigration Reform and Control Act of 1986 (IRCA) are an exception to the documentation requirements stated above.

1. These individuals have a SSN to disclose but will not have the copy of the SSC as documentation. Acceptable documentation from those individuals is a letter from the Immigration and Naturalization Service (INS) assigning them the SSN.
2. IRCA applicants generally applied for a SSC at the time they applied for amnesty. The Social Security Administration assigned these individuals a SSN and issued a SSC. However, this card was forwarded to INS and was placed in the applicant's file. INS sends a letter to IRCA applicants informing them that a SSN has been assigned and they may use it until they are granted temporary lawful resident status.

#### G. Unacceptable Documentation. Mortgagees may not accept documents that:

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1. Are produced or completed by individuals, such as business cards, self completed wallet identification cards, or other store purchased cards. (People often purchase a plastic or metal SSC from companies or mail order firms.)

2. Have little or no importance, such as club membership or library cards.

3. Mortgagees have the discretion to include similar documents in this category.

H. Invalid Or False Documents. A mortgagee may reject documents that are invalid or false. To be considered invalid or false, the document must fall under one of the following categories:

1. Invalid Social Security Numbers - Some individuals use invalid numbers taken from sample cards put in new wallets or from similar advertising.

2. False Documents - False Identification documents can be either counterfeit, altered, or impostors:

a. Counterfeit - A forgery of a genuine document or a copy of a document which may appear authentic but is not legally issued.

b. Altered - A genuine document that has had some identification changed to match the bearer. Most often the name, photograph, address or age and physical description are changed on altered documents.

c. Imposter - A genuine document obtained under false pretenses, or a blank genuine document stolen from the issuing agency.

I. Procedures For Rejecting SSNs Or Documentation. When a mortgagee suspects that it has been given an invalid or false document to evidence the SSN, it should notify the homeowner and require an explanation or additional proof of the SSN. If the additional documentation is questionable, the mortgagee may require the SSC be provided, or a duplicate card obtained if the original is not available. If the additional documentation does not satisfy the mortgagee that it is valid or genuine, the following actions must be taken:

1. The assistance payments contract must be suspended effective the 1st day of the first month after receipt of the additional documentation.

2. The assistance payments contract cannot be reinstated until the validity of the SSN can be verified. The mortgagee must advise the homeowner in writing of the action.

3. If the validity of the SSN is verified, the assistance payments contract is to be reinstated effective the 1st day of the month following receipt of the documentation.

J. Certifications.

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1. If individuals disclose their SSN, but are unable to meet the verification requirement, a written certification must be executed by the individual to this effect. The certification should state the individual's name, SSN, and that he/she is unable to submit the documentation. The certification must be signed, and dated by each individual who does not have the documentation. If the individual is under 18 years of age, the certification must be executed by his/her parent or guardian.
2. The individual then has 60 days from the date of certification to obtain necessary documentation to verify the SSN disclosed. If an individual is at least 62 years of age, the mortgagee may at its discretion, extend the period up to an additional 60 days (or 120) days after certification).
3. The mortgagee may refer the homeowner to the local Social Security Office so that he/she may complete and submit Form SS-5, "Application for Social Security Card," to request a duplicate Social Security Card.
4. If any individual has not been assigned a SSN, a certification executed by that individual is required. The certification should state the individual's name, and that he/she has not been assigned a SSN. The individual should then date and sign the certification. If the individual is under 18 years of age, the certification must be executed by his parent or guardian. This certification is required annually. No further action is needed. A mortgagee cannot require an individual to apply for a SSN.

#### K. Criminal Violations.

1. Since the SSN was considered an administrative tool for many years, it was not considered necessary to have a penalty provision covering the fraudulent application for or use of a SSN. However, as time passed and the SSN came into broader use, the need to protect it became more apparent. Penalty provisions were added to the Social Security Act and are contained in 42 U. S. C. 408(f), (g) or (h). Violations of these statutes include:
  - a. Providing false information to obtain a SSN.
  - b. Using a SSN based on false information to get a federally financed benefit.
  - c. Using someone else's SSN.
  - d. Misusing a SSN for any reason.
  - e. Making, possessing, buying, or selling counterfeit Social Security cards.
2. If documentation obtained indicates that the homeowner knowingly intended to deceive the mortgagee, referral of the information should be forwarded to the Office of Inspector General for the Department of Health and Human Services (DHHS) may be contacted by toll free hotline: 1-800-368-5779 or by contacting a Regional Inspector General for investigation.

### 10-5 RECERTIFICATION OF INCOME, FAMILY COMPOSITION, OCCUPANCY AND EMPLOYMENT.

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A. Recertification Requirements. In an effort to fully apprise mortgagors of their responsibility and the importance of reporting all required information timely, mortgagees must notify mortgagors of the requirement not only at the time of the annual recertification but also at an additionally specified time within 30 days after the end of each calendar year. It is suggested that this be accomplished at the same time the mortgagor is provided a statement of the interest paid and the taxes disbursed from the escrow account during the preceding year.

1. Requirement For All Mortgages (24 CFR 235. 350 and 235. 355). Mortgagees must secure recertifications of gross income, family composition, occupancy, and employment at least annually and as otherwise required by HUD regulations to ensure that the amount of assistance paid on behalf of the mortgagor is that which is authorized by statute.

2. Disclosure and Verification of Social Security Numbers (24 CFR 235.350(d)). Mortgagor must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification.

3. Requirement For Mortgages Insured On Or After January 5, 1976. The annual recertification must contain a statement of the total gross income (i.e., before adjustments and/or deductions) reported for all adult family members living in the household as shown on their last federal income tax returns.

NOTE: If the “total” gross income reported on their last federal income tax returns is “individually or collectively” more than 25 percent above the income reported on the recertification, the mortgagee must require a written explanation of the difference in income from the mortgagor.

B. Recertification Form To Be Used. The only acceptable form on which mortgagors and their families may recertify is the Form HUD-93101, Recertification of Family Income and Composition, Section 235(b). The recertification must include the following:

1. the signature of at least one mortgagor;
2. the date of the signatures;
3. current income, total income for last 12 months and expected income for next 12 months of all family members;
4. names and addresses of sources of income for verification purposes; and
5. Social Security Numbers of all family members 6 years of age and older.

### 10-6 WHEN RECERTIFICATIONS ARE REQUIRED (24 CFR 235.350).

A. Annual Recertifications.

1. Date Recertification Must Be Performed. Except where the mortgagor has been recertified within 90 days prior to the anniversary (or arbitrary anniversary) date, the mortgagee must recertify the mortgagor at least annually on either:

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- a. the anniversary date of the first mortgage payment due under the mortgage; or
- b. an arbitrary anniversary date established by the mortgagee for its entire portfolio of Section 235 mortgages.

#### 2. Events Which Permit Recertification Anniversary Dates To Be Changed. Once established, annual and arbitrary anniversary dates are to remain constant except when:

- a. the mortgage is recast;
- b. the mortgage is transferred to a new mortgagee or servicer; and/or
- c. prior written approval has been obtained from the local HUD Field Office where the mortgagee is located with a copy of such approval must be maintained in each individual case file. A copy must also be provided as an attachment to the Form HUD-93102 assistance payment request form notifying HUD Headquarters Office of Finance and Accounting's Subsidy Accounting Branch.

NOTE: When any of the above events occur, the mortgagee or servicer automatically has the option of:

- (1) using the anniversary date of the first mortgage payment due under the mortgage;
- (2) using the same arbitrary anniversary date (assuming an arbitrary date was being used) as the transferring mortgagee or servicer; or
- (3) selecting a different arbitrary anniversary date.

#### B. Intermittent Recertifications.

#### 1. For Mortgages Insured Before January 5, 1976. Recertifications must be done within 30 days of the effective date of any "addition to" the adult family's "source of income". An "additional" source of income may be due to, but not necessarily limited to, the following:

- a. a family member (other than a mortgagor) may have reached the age of 21. If this family member was a wage earner, this would require that his/her wages now be taken into consideration when computing assistance payments;
- b. an adult who did not work previously may have obtained employment;
- c. an adult who had a job may have elected to get an additional part-time job; and/or
- d. a family wage earner may have gotten married.
- e. an adult wage earner joins the family through marriage.

NOTE: Unless the increase was due to a change in source, the mortgagor needs only to recertify at the next anniversary—at which time the increase must be reported to the mortgagee.



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2. For Mortgages Insured On Or After January 5, 1976. Recertification is required within 30 days of the date when the total gross income increases by \$50 or more per month, regardless of whether the source changes.

It is the mortgagor's responsibility for providing this information to the mortgagee.

Mortgagors must be made aware that their failure to advise the mortgagee of an increase in income within the 30-day time frame could result in that mortgagor being required to repay a significant amount of overpaid assistance (24 CFR 235.350(c)).

- C. Recertifications. At The Direction Of The Secretary Of HUD. The Secretary of HUD, and/or his designee, may require recertification any time there is reason to believe recertification is warranted (24 CFR 235.350(a)(3)).

- D. Optional Recertifications. At The Request Of The Mortgagor (24 CFR 235.355). The mortgagor has the option of requesting that the mortgagee accept a recertification any time there is a reduction (of any amount) in the adult family income.

Should the change not be made within the 30-day time frame due to the mortgagor's failure to notify the mortgagee, any increase in assistance resulting from income decrease will be made effective the first day of the month following the date the recertification is received by the mortgagee and not retroactively. (24 CFR 235.360).

1. Acceptable Reasons For Performing Optional Recertifications. The mortgagor may request an optional recertification due to, but not necessarily limited to, any of the following reasons:

- a. an adult wage earner's death;
- b. an adult wage earner moving out of the property;
- c. an adult wage earner becoming unemployed; and/or
- d. an adult wage earner's loss and/or reduction of overtime or salary.

NOTE: If the mortgagor is already receiving the maximum assistance allowed based on income (i.e., maximum allowed under Formula Two), the recertification requesting that assistance be increased need not be processed. However, the mortgagor must be advised, in writing, of the reason for the mortgagee's inability to increase the assistance payment.

2. Time Frame For Making The Request.

- a. In the case of self-employed adult family members, the reduction must have continued for at least 90 days prior to the mortgagor's request for recertification. The best information available must be used to ensure that the reduced income has been in effect for 90 days. Assistance must not be based on the unsupported word of the mortgagor.

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b. For mortgagors NOT self-employed, the reduction or loss of income must reduce the family income to less than the income that was used in computing the most recent assistance.

3. Time Frame for Mortgagee To Process Optional Recertification. The mortgagee must request on HUD Form 93101-A to make any assistance increase effective the first day of the month following the month the mortgagor's recertification is received.

### 10-7 ANNUAL RECERTIFICATION OF MORTGAGORS.

A. Time Frame For Requesting Recertifications. Unless the assistance payments contract has been suspended or terminated, annual recertifications must be secured by the mortgagee:

1. no earlier than 60 days before and no later than 30 days after the mortgage (or arbitrary) anniversary date; and
2. the HUD-93101-A must be received by HUD Headquarters Office of Finance and Accounting's (OFA's) Subsidy Accounting Branch no later than 45 days after the mortgage anniversary (or arbitrary anniversary) date.

NOTE: The Subsidy Accounting Branch (SAB) will identify as suspended the subsidy payments on cases when required annual recertifications are not received by the 45<sup>th</sup> day after the anniversary date. SAB will notify mortgagees by letter that an account has been identified as suspended.

When subsidy is identified as suspended by SAB due to untimely recertification, it will not be paid retroactively unless the HUD-93114 request for reinstatement and the HUD-93101-A are accompanied by a statement from the mortgagee. The statement must include the reason for mortgagee's failure to adhere to recertification requirements.

Assistance payments identified as suspended by SAB shall not be retroactively reinstated because a mortgagor failed to properly respond to a timely request from the mortgagee for recertification.

For examples of the effective dates of payment changes resultant from recertifications, see Paragraph 10-15C.

B. "Reasonable Effort" Action Required Of Mortgagee. A reasonable effort must be made by the mortgagee to comply with the time frames shown in Paragraph 10-7A. In order for the mortgagee's actions to meet the "reasonable effort" requirement, the mortgagee's actions must include, but not necessarily be limited to, the following:

1. sending a written notice to the mortgagor, early enough to result in obtaining recertification no earlier than 60 days before and no later than 30 days after the mortgage anniversary (or arbitrary anniversary) date, which:

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- a. advises the mortgagor of the annual recertification requirement;
  - b. transmits a Form HUD-93101 that must be filled out and returned to the mortgagee;
  - c. advises the mortgagor that failure to return the completed HUD-93101 within the required time frame will result in suspension of subsidy payments;
  - d. advises the mortgagor that assistance payments will not be made retroactively and that the mortgagor will be responsible for making the full mortgage payment during the period of suspension;
  - e. advises the mortgagor that the reinstatement of suspended subsidy payments will not be effective until the first payment month which occurs after 30 days from the date of the mortgagee's receipt of HUD-93101 from the mortgagor; and
  - f. provides a telephone number and contact name to be used by the mortgagor to obtain responses to recertification questions.
2. providing special help (whether requested or not) to mortgagors who are unable to recertify due to lack of education, language barrier, physical or emotional impairments.

NOTE: Mortgagees are expected to assist mortgagors in completing forms and/or advising relatives or community assistance agencies when mortgagors need assistance in filling out forms.

#### **10-8 MORTGAGOR FAILS TO RECERTIFY WITHIN TIME FRAME (24 CFR**

**235.375(b)(4)).** If the mortgagor fails to respond to the mortgagee's request for recertification within the required time frame, the mortgagee is required to request via Form HUD-93114 that the HUD Headquarters OFA's Subsidy Accounting Branch suspend assistance payments effective the first month after the date that the recertification was required.

NOTE: The Subsidy Accounting Branch will identify the case as suspended and will not pay assistance payments when a recertification is due and neither a HUD-93101-A nor a HUD-93114 is received from the mortgagee by the 45<sup>th</sup> day after the anniversary date.

- A. **Mortgagor Recertifies After Suspension.** If the recertification is received by the mortgagee after assistance payments have been suspended, the mortgagee must submit Form HUD-93114, together with HUD-93101-A, requesting that the assistance payments be reinstated as an adjustment transaction Code 2 on the next regular month's billing Forms HUD-93102 and HUD-300.

NOTE: The billing forms and all adjustment transaction documents (i.e., Forms HUD-93114, HUD-93101-A, HUD-93102 and HUD-300) should be submitted as one package to the Subsidy Accounting Branch for processing. The reason for the adjustment in Column 3 on Form HUD-300 should be noted as "Late mortgagor recertification".

The reinstatement will be effective on the first payment month which occurs after the date of the mortgagee's receipt of Form HUD-93101 from the mortgagor.

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NOTE: No assistance will be paid for the period during which a recertification should have been received (i.e., 30 days after it was requested) and the date it was actually received.

B. Contract Suspended Due To Mortgagee's Failure To Meet "Reasonable Effort" Requirement. In situations where HUD determines that the action taken by the mortgagee when contacting the mortgagor with regard to the recertification fails to meet the "reasonable effort" requirement (as stated in Paragraph 10-7B) and the assistance was subsequently suspended, the mortgagee must go back to that mortgagor and allow that mortgagor to recertify as long as he/she recertifies within 30 days of this second written request. The mortgagee must:

1. secure recertification and complete verification;

NOTE: If more than one recertification was missed, for each missed recertification the mortgagee must reconstruct family income as accurately as possible for each anniversary date.

2. make any resulting change in assistance effective retroactive to the period for each recertification in question; and

3. if the recertification results in overpaid assistance, careful consideration must be given in order to choose a method which will allow for the recovery of overpaid assistance that may have accumulated without creating an undue hardship on the mortgagor.

However, the mortgagee must immediately refund the total overpaid assistance amount to HUD. The overpaid amount should be included as an adjustment transaction on the next regular month's billing which should be accompanied by applicable Forms HUD-93114 (requesting reinstatement) and HUD-93101-A (recertifying income). The periods of overpayment (i.e., month and year) must be included in Column 3 of Form HUD-300. The reason for adjustment should be noted as "Late Recertification Request".

NOTE: When assistance has been suspended and a request for reinstatement is retroactive, the current monthly billing amount should be treated as a Code 1 transaction on Form HUD-300. The retroactive billing amount should be treated as a Code 2 adjustment transaction on Form HUD-300.

Both the reason for adjustment (i.e., late mortgagor recertification, recertification request; suspended in error, etc.) and the beginning and ending effective period (month and year) must be included in Column 3 of Form HUD-300. Failure to provide this information or failure to attach the required Forms HUD 93101-A and HUD-93114, as appropriate, will result in non-payment of the adjustment amount.

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Disallowed adjustment amounts due to lack of documentation must be included on the next regular month's billing. The HUD Headquarters OFA's Subsidy Accounting Branch will process only one Form HUD-93102 for each billing period.

#### 10-9 DETERMINING INCOME.

- A. Gross Annual Income (24 CFR 235.5(d)). Assistance is based on gross income which is made up of the total income (prior to any adjustments, taxes or other deductions) received by all members of the mortgagor's household.

NOTE: Members of the mortgagor's "family or household" are considered to be all persons living in the mortgaged property who are related to the mortgagor by blood, marriage or operation of law.

1. Income Sources Included. For the purposes of annual or other required recertifications which project income, the following sources must be included:

- a. wages, child support, alimony, and rental income;
- b. Social Security or welfare benefits;
- c. retirement benefits, military and veterans' usability benefits;
- d. unemployment benefits;
- e. interest and dividend payments;
- f. lottery winnings paid over extended periods; and
- g. insurance benefits paid on a fixed schedule.

2. Income Sources Excluded. Income from the following sources must NOT be included:

- a. lump sum insurance benefits;
- b. lump sum winnings from a lottery;
- c. hospital or other medical insurance benefits;
- d. bonuses and/or overtime (if they DO NOT represent a pattern of annual payments over a period of time);
- e. food stamps;
- f. scholarships; or
- g. any unusual income such as payments made to Vietnam Veterans from the Agent Orange Settlement Fund.

NOTE: The Agent Orange Compensation Exclusion Act (Public Law 101-201) requires that none of the payments made to Vietnam Veterans from the Agent Orange Settlement Fund be considered income for the purpose of determining eligibility for or the amount of benefits under any Federal or federally assisted program. This requirement must be adhered to when processing Section 235 Annual or other required Recertifications of Family Income and Composition.

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h. any temporary income such as income of a wage earner from temporary employment that has been discontinued at the time recertification is taking place.

B. Income Requiring Special Consideration. The mortgagee is to use the mortgagor's verified current income or the mortgagor's stated "expected income", WHICHEVER IS HIGHER.

"Expected income" is different from income received over the past 12 months (or year-to-date income) in that if there has been a recent increase in the mortgagor's (and/or family member's) hourly wage or salary, that new hourly rate or salary would serve as the basis for projecting the "expected income" for the next 12-month period.

1. Overtime Pay. Overtime pay must be included in the total income if the employer verifies that overtime is currently being paid on a regular basis regardless of whether the employee states (or fails to state) at the time of verification that the overtime is expected to continue in the future. If there is a continuing record of overtime work, the only time the overtime income is to be excluded is when the employer verifies that overtime will be discontinued.

2. Self-Employment. Include in gross income all income listed on Internal Revenue Service's (IRS) Form 1040. When calculating the income of self-employed mortgagors, the deductions set out in Schedule C, Profit (or Loss) from Business or Profession, must be recalculated for HUD purposes. Salary or wage distributions for the mortgagor or co-mortgagor, depletion or depreciation) are not deducted from the gross business income for HUD purposes.

NOTE: For example, Schedule C is not the only form where self-employment income is claimed, farmers may have a Schedule F instead of a Schedule C. All sources of self-employment income must be included.

a. Recalculate Business Income On IRS Form 1040. Mortgagees must recalculate the business income (Item 12 on IRS' Form 1040). If the recalculated income shows a loss, that loss cannot be used to offset other forms of income reported on Items 7 through 22 on IRS Form 1040.

b. Item 12 on the mortgagor's IRS Form 1040 may reflect a negative amount in some cases. However, when the mortgagee recalculates the Schedule C as prescribed in Paragraph 2a above, it could result in a positive amount to be included in income. Elimination of the deductions for depletion and depreciation may, from HUD's perspective, result in a business profit.

3. Special-Purpose Payments. These are payments made to the mortgagor's household that would be discontinued if not spent for a specific purpose. Payments which are intended to defray specific expenses of an unusual nature and which are expended solely for those expenses should not be considered as income. Examples include, but are not necessarily limited to, the following:

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a. Medical Expenses. Funds provided by a charitable organization to defray medical expenses, to the extent to which they are actually spent to meet those expenses.

b. Foster Children. Payments for the care of foster children who are not otherwise related to the mortgagor's household by blood, marriage, or operation of law.

NOTE: Foster children are not considered members of the family. Therefore, no \$300 adjustments to income are to be made because of their presence.

c. VA Educational Benefits and/or Scholarships. VA educational benefits and/or the proceeds of scholarships are not considered income to the extent the benefits or proceeds are actually used for educational expenses (i.e., tuition, books, lab fees, etc.). Any excess income after deducting actual educational expenses must be included as income.

NOTE: Costs of transportation to and from school or for cost of housing for living away from home to attend school are not considered educational expenses.

d. Payments In Kind. Items such as food stamps, meals, clothing, or transportation provided by the employer is not considered as income if used for that expressed purpose. However, cash reimbursement for any of these items is considered as income to the extent it continues when not spent to defray a specific expense.

e. Insurance Benefits.

(1) Health/Accident/Disability Insurance.

(a) Premiums Paid By Mortgagor. Benefits received from policies where the mortgagor is both the insured and the beneficiary are not to be considered income if the mortgagor paid the premiums.

(b) Premiums Not Paid By Mortgagor. If these premiums were paid by someone outside the mortgagor's household (such as an employer), the benefits would be considered as income.

(2) Other Types of Insurance. The benefits of other type insurance policies would be considered as income if the benefits are paid in two or more installments unless they meet the test of special purpose payments as described in Paragraph 10-9B3 above.

Regardless of the type or reason for payment, insurance benefits paid in a lump sum are not to be considered income. However, if the mortgagor chose to invest any or all of the money from this lump sum payment, all interest (or other gain) from this investment would be considered as income.

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f. Earnings of Minors. Income of all family members within the mortgagor's household must be included in the family's total gross income which is used as a base for computing the assistance.

All income of all members of the family is included in gross family income. In arriving at the family's adjusted income, five percent of this total is subtracted before subtracting the earnings of minors. Note that only the earnings of minors are subtracted. Income of minors from sources other than earnings is not subtracted.

For example, income to a minor from a trust or an insurance policy is not earnings and is not subtracted. It is thus immaterial whether income other than earnings is paid to a minor or to an adult family member for the benefit of the minor. In neither case would it be deducted in arriving at adjusted income.

g. Military Pay and Allowances. All cash payments to a member of the armed forces are considered as income, regardless of the reason for the payment, unless the payment is made only once and for a special purpose, such as a lump sum re-enlistment bonus.

Many military personnel may exercise a degree of choice in some areas of compensation. For example, they may choose between eating in a government cafeteria without charge or receiving an allowance for rations in cash and paying for any meals consumed in the cafeteria. If the allowance is received in cash, it is income. Otherwise, it is not.

h. Reimbursement for Expenses. If the family member's employment requires spending considerable time away from home on a regular basis and the employer provides reimbursement for the unusual living expenses incurred as a result, the reimbursement is not normally considered to be income.

Exceptions to this rule:

(1) If the reimbursement is paid for periods other than when the employee is actually away from home, the entire reimbursement is considered as income regardless of whether the employee accounts to the employer for actual expenses and the reimbursement is fixed on a daily basis (or some other standard) and is inadequate to cover all normal living expenses; and

(2) if the employee accounts to the employer for expenses, and the expenses equal or exceed the reimbursement, the reimbursement is not considered income. However, if the reimbursement exceeds the expenses, the excess reimbursement is considered income.



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NOTE: Where expenses exceed the reimbursement, the amount not covered by the reimbursement cannot be deducted from the family's gross annual income.

**10-10 VERIFYING INCOME.** To calculate assistance payments, the mortgagor's verified current income, or the reported expected income, **WHICHEVER IS HIGHER**, must be used. The mortgagor's option to recertify is his/her only protection when there is a loss of income. When mortgagees fail to use the highest income reported, overpaid assistance results.

A. Third-party Verification Required. Third-party verification of the mortgagor's statements, similar to that required when a mortgage is originated, is required at the time of each recertification.

EXCEPTION: Third-party verifications are not required for self-employed persons.

B. Verification Not Available. Where third-party verification cannot be obtained and/or the mortgagor's statements cannot be reconciled with the verification, the local HUD Field Office having jurisdiction over the mortgaged property should be contacted for assistance in establishing the income.

C. Unacceptable Forms Of Verification. Examples of unacceptable forms of verification include, but are not necessarily limited to, the following:

1. Federal income tax returns or Forms W-2's (withholding tax forms), except for self-employed persons and where HUD has reviewed the case and has established that this would be the best information available;
2. where verifications have passed through the hands of the mortgagor and/or the person whose income is being verified; and/or
3. checks and/or pay stubs which show only the net amount of the check.

D. Acceptable Forms Of Verification. The most difficult part of income verification is determining that all sources of earned income have been reported by all members of the mortgagor's household.

1. Listed below, ranked in the order of preference, are acceptable forms of verification for earned income.

a. Pay Stubs and Checks. If these show gross income as well as net, these documents are considered to be the most reliable source of accurate information concerning recent income.

(1) Documentation for Preceding Six months Is To Be Requested. The most recent information available is to be used for recertifications. Salary information requested should include at least any pay stubs and/or copies of

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check(s) received by any household member just prior to the mortgagee's request as well as any checks or income received within at least the last six-month period.

(2) Each Source of Income Must be Documented. Care should be taken to assure that the mortgagor provides information with respect to each source of income. If a source is missing, one of the other forms of verification should be used with respect to that source.

b. HUD Form 92004-G Request for Verification of Employment. This form of verification is acceptable (or similar forms designed by the mortgagee to elicit the same information) only if it is delivered directly to and from the employer without passing through the hands of the mortgagor and/or the employee whose salary is being verified.

NOTE: If the HUD form is used, it should be modified to add, in the remarks section, a request for information about anticipated wage increases.

c. Telephone Verification. While some employers may be reluctant to provide income information by telephone, they will usually verify that the mortgagor is or is not employed with that company. In using the telephone:

(1) Contact Designated Personnel. It should be established by the mortgagee that the person spoken to is either:

(a) the mortgagor's supervisor; or

(b) an employee of that company who has been authorized by that company to give out employment verifications.

(2) Maintain Mortgagor's Privacy. The detailed reason for the call (i.e., to determine if the employee remains eligible for Sections 235 subsidy) should not be disclosed to any parties other than those described in the preceding paragraph.

(3) Document Telephone Call. Each telephone call should be fully documented as follows:

(a) the date;

(b) the time;

(c) the parties of the conversation; and

(d) the information provided by the employer.

d. Use of Standard Benefit Scales. Some localities have established that a family with a given composition receiving public assistance or unemployment compensation as its sole source of income must receive assistance in a set amount.

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NOTE: Where this is the case, the income taken from the current schedule of benefits established by that source may be accepted as the family's income without individual verification of the benefits.

- e. Use of Public Housing Authority's Standard Minimum Income Scales. Some Public Housing Authorities have established schedules of minimum incomes for various occupations in their areas, especially those with fluctuating, seasonal, and irregular patterns. These schedules are based on experience indicating that workers in each of the covered occupations can be expected to earn at least a minimum each year under normal working conditions.

(1) Income Reported At Or Above Minimum Scale. If the mortgagor has stated an income at or above the minimum found in these tables, the mortgagor's statement may be accepted without further verification.

(2) Income Reported At Less Than Minimum Scale. Where the mortgagor can provide convincing evidence that a lower income is accurate, the lower figure may be used.

- 2. Income from Self-Employment. As noted in Paragraph 10-9 with respect to self-employment, the income of self-employed persons must often be adjusted to avoid reducing it for non-cash expenditures such as depletion and depreciation. Supporting documentation (such as statements showing deposits consistent with claimed income) should be obtained from self-employed mortgagors.

- a. Audited Profit and Loss Statements. A copy of the latest audited Profit and Loss Statement may be requested from the mortgagor.

NOTE: Due to the expense involved, mortgagors are not to be required to obtain an audited Profit and Loss Statement for the sole purpose of the mortgagee using it for income verification to determine Section 235 subsidy. However, should a recent audited Profit and Loss Statement exist for other purposes, the mortgagee may require that a copy be provided for income verification.

- b. Unaudited Profit and Loss Statements. These are acceptable only if prepared by someone other than the mortgagor. Even then, they are of questionable validity as they are based solely on information provided to the preparer by the mortgagor. Any apparent discrepancy should be followed up thoroughly.

- c. Financial Statements. A financial statement is a picture of the financial condition of the business at a specific time. It must be noted that a financial statement does not provide information about the income of the mortgagor, but only serves as a basis for determining that the business can afford to pay the mortgagor what is claimed as earned income.

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NOTE: When the self-employed mortgagor is a principal owner of a corporation, that person's income is generally a combination of salary and dividends on investment in the corporation.

In these situations, the corporation's undistributed earnings should also be considered as income of the mortgagor to the extent of that person's ownership.

3. Unearned Income. Income from sources other than employment or self-employment must also be verified, and there are probably as many ways to do this as there are different sources of income. It is left to mortgagees to determine the best source of information in each case.

#### E. Verification Not Required. Certain types of income need not be verified.

1. Minors. Incomes of minors (persons living in the household who are under the age of 21) need not be verified. Only the income of "adult" members of the family need be verified. "Adult" for this purpose is any mortgagor and spouse of any mortgagor (regardless of age) and any other person related to any mortgagor by blood, marriage, or operation of law who occupies the mortgaged property and is 21 years old or older.
2. Latest Verification Performed Within Last Six Months. On mortgages insured prior to January 5, 1976, income which has been verified within the six months preceding the mortgagee's receipt of the signed Form HUD-93101 need not be verified if:
  - a. the family members report no change in employers; and
  - b. the income reported is either the same as that verified earlier or reflects a change which was expected and/or verified as a part of the previous verification.
3. Disqualifying Income. If either the current or expected income as reported by the mortgagor is adequate to enable the mortgagor to make the full monthly payment with 20 or 28 percent of income (depending on when the mortgage was insured), no further verification is necessary before suspending the assistance payments contract.

**10-11 FAMILY COMPOSITION.** Family composition need not be verified, but, all changes in the status of adult and family members must be questioned.

- A. Separations. Where a mortgagor has left the property due to a separation, the remaining mortgagor may certify as to the composition of the remaining portion of the household.
- B. Death. Normally, if there is no owner-mortgagor occupying the property, assistance cannot be paid. In the event of the death of one or more mortgagors, there could be a question as to both the title to the property and the mortgage obligation. The status may be even more uncertain if the only survivors are minor children.

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1. Obtaining Clear Title/Disposing of Property. Where the only survivors are minor children, it may be necessary to initiate court proceedings in order to have a guardian appointed for the purpose of clearing and/or disposing of the title of the property.
2. Commencement of Assistance Payments. In the event of a death or separation leaving no owner-mortgagor, the mortgagee may begin billing for assistance immediately as though there had been an assumption at the time of the death or separation, provided the mortgagee can identify an individual who meets all of the following conditions:
  - a. is a member of the surviving family (even though he/or she may not have qualified as a "family" member for assistance purposes earlier);
  - b. will probably become the holder of title (either in his/her own name or in trust for one or more of the survivors);
  - c. will assume the mortgage obligation in the same capacity;
  - d. will occupy the mortgaged property with the survivors; and
  - e. will qualify for assistance within the limits prescribed for initial eligibility (see Paragraph 10-22).
3. Establishing Eligibility. It must be recognized that to determine who will most likely inherit or be appointed as a guardian or trustee on behalf of the survivors before the estate is settled can only be based on assumptions. Once the mortgagee can reasonably determine who that individual will be and whether the conditions in Paragraph 10-11B2 have been met, eligibility must be established.

NOTE: Establishing eligibility need not be delayed until the disposition of title has been completed and the mortgage obligation is formally assumed by the new mortgagor.

Should it become evident that those assumptions are incorrect, the assistance payments contract must be suspended effective with the date of death or separation and any assistance paid in the interim must be refunded to HUD.

**10-12 COMPUTING ASSISTANCE (24 CFR 235.335).** The maximum monthly assistance that can be paid by HUD is the lesser amount computed under two formulas, commonly referred to as "Formula One" and "Formula Two". Instructions for these computations are given on Form HUD-93101-A under Section A and B.

- A. Formula One. The "Formula One" assistance payment is the difference between the full monthly mortgage payment (i.e., principal, interest, and all escrowed items) due under the mortgage and either 20 or 28 percent of the mortgagor's adjusted monthly income. (See Section A and B of the Form 93101-A to determine how the assistance payment is computed. )

NOTE: The 20 percent calculation applies to mortgages pursuant to a firm commitment issued on or before October 26, 1984. The 28 percent calculation applies to mortgages insured pursuant to a firm commitment issued on or after October 27, 1984.

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The "Formula One" payment must be recomputed whenever there is a change in the total payment or when there is a change in the income or family composition reflected in a recertification.

B. Formula Two. The "Formula Two" assistance payment is the difference between the actual monthly payment to principal, interest, and the mortgage insurance premium (MIP) under the mortgage and the monthly payment to principal and interest (without the MIP) that the mortgagor would have to pay if the mortgage bore interest at some lower rate. Those lower rates vary, depending on when the mortgage was insured, as indicated below:

Date of Closing Note Rate	Note Rate	Interest Rate to Compute Second Element of Formula Two	P&I Factor per \$1,000 Term
8/9/68-1/4/76	No difference	1.00%	\$3.22
1/5/76-3/6/78	No difference	5.00%	\$5.37
3/7/78-3/8/81	No difference	4.00%	\$4.78
3/9/81 and later	13.50% or lower	4.00%	\$4.78
	13.75-14.00%	4.75%	\$5.22
	14.25-14.50%	5.50%	\$5.68
	15.00%	6.00%	\$6.00
	15.50%	6.75%	\$6.49
	16.00%	7.25%	\$6.83
	16.50%	8.00%	\$7.34
	17.50%	8.00%	\$7.34

**10-13 INTERIM ASSISTANCE PAYMENTS.** When it is impossible to complete the verification of all or part of the family's income at the time of the effective date of a change in the assistance payment, the assistance payment should be temporarily adjusted, if appropriate, based upon information provided by the mortgagor on Form HUD-93101 until all income can be verified or until the local HUD Field Office makes a decision as to the amount of assistance to be paid based on available documentation.

A. Basis For Computing Interim Assistance Payments. Interim changes in assistance payments should be based on the highest family income figure which can be developed from any source (or sources) until the mortgagor's family income can be verified or a decision is made by the local HUD Field Office.

B. Affect On Payments. Interim changes in assistance payments should:

1. not result in overpayment of subsidy unless the mortgagor understates income;
2. result in the Formula One assistance (after verification) being equal to or greater than the interim adjustment; and

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3. not affect Formula Two calculations as the Formula Two are not income related.

C. HUD Assistance Requested. Whenever acceptable verifications cannot be obtained, the local HUD Field Office should be asked to make a decision as to the total family income to be used to determine the amount of assistance to be paid on behalf of the mortgagor.

D. Documentation Needed. Requests to local HUD Field Offices for assistance in determining correct assistance should include:

1. Form HUD-93101, Recertification of Family Income and Composition, Section 235(b);
2. all income verifications received to date that pertain to this recertification, including summaries of any received verbally;
3. copies of any correspondence related to the recertification or verification of income.
4. a summary of any attempted verifications or reconciliation of differences may not have been made clear by the basic documentation; explain the problem encountered; and
5. the names, addresses and telephone numbers of any income source identified by or for any family member.

**10-14 FIRST MONTHLY ASSISTANCE PAYMENT.** Where mortgage closings do not take place on the first day of a month, the first assistance payment on a new mortgage will normally be smaller or larger than subsequent assistance payments (depending on how interest for the first partial month is collected from the mortgagor).

If the interest is collected at closing or as a separate payment of interest only on the first of the month following closing, the initial assistance payment will be smaller. If the interest is collected as a part of the first full monthly installment, both that payment and the assistance payment will be larger.

In calculating this first assistance payment, the mortgagee's basic calculations are the same. Both "Formula One" and "Formula Two" assistance payments are to be calculated, but the mortgagor's income and the full monthly payment used in "Formula One" and the monthly payments to principal, interest and MIP on the actual mortgage and to principal and interest on a mortgage at the appropriate interest rate used in "Formula Two" must be adjusted to reflect the number of days for which interest was actually collected.

**10-15 ASSISTANCE PAYMENTS ADJUSTMENTS (24 CFR 235.360).** Most adjustments take place as a result of changes in income or family composition reflected in a recertification or due to an increase in the full monthly payment required by the mortgage.

A. Adjustments. Assistance payment adjustments will be made either retroactively or prospectively as described below.

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1. Retroactively. Assistance payments may be adjusted retroactively (i.e., adjusted back to the date the change should have taken effect). Payments may be adjusted retroactively under the following circumstances:

a. to correct errors or to include previously unreported income (i.e., \$50.00 increases);

b. to reinstate a suspended assistance payments contract when:

(1) there is an assumption and the assumptor is found eligible for assistance; or

(2) a foreclosure action is withdrawn;

c. when an “interim” assistance payment was put into effect in accordance with Paragraph 10-13; and

d. when directed to do so by HUD.

2. Prospectively. Most assistance payments will be adjusted prospectively (i.e., adjustments made effective within 30 days after the processing of recent or anticipated changes when reported by the mortgagor as required). These changes may be due to, but not necessarily limited to, the following:

a. changes in income or family composition reflected in a recertification; or

b. an increase in the full monthly payment required under the mortgage.

B. Computation Changes. “Formula Two” assistance payments change every twelve months (on the anniversary of the beginning of amortization) at the time MIP changes for the coming year.

NOTE: This adjustment must be made even when the mortgagee has established an arbitrary anniversary date for the purpose of processing recertifications.

C. Effective Dates Of Changes (24 CFR 235. 360). The effective date of payment change recorded in Block 19 on Form HUD-93101-A must be in accordance with the following schedule:

Action Requiring Change	Effective Date
Annual recertification if mortgagor's share of payment increases	First day of first or second moth after receipt of Form HUD 93101 at the mortgagee's discretion
Annual recertification if mortgagor's share of payment decreases	THE first day of the first month after receipt of Form HUD-93101
Reported increase in income	THE first day of the first month after the effective date of income increase
Reported decrease in income	The first day of the first month after receipt of Form HUD-93101
Change in total monthly payment required under the mortgage	The date of the monthly payment amount change



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Action Requiring Change	Effective Date
Change in "Formula Two" assistance due to an MIP change	The anniversary date of the beginning of amortization

**10-16 ADVISING MORTGAGORS OF CHANGES.** The mortgagee must notify the mortgagor of changes in assistance payments no less than 10 days before the due date of the first payment affected by the change.

- A. Required Advance Notice Not Given. Any time there is an increase in the mortgagor's share of the payment and the required 10-day advance notice cannot be given to the mortgagor, the mortgagee must arrange a schedule that is acceptable to both parties (must be one that is realistic and does not put an undue hardship on the mortgagor) for collecting any additional amounts that may become due before the 10-day advance notice period can be given.

NOTE: Payment schedule arrangements made between the mortgagor and the mortgagee should not result in overpaid assistance. The amount of assistance requested from HUD on Form HUD-93102 should be reduced effective on the effective date of payment change in accordance with the schedule provided in Paragraph 10-15C, regardless of when the mortgagee collects the higher mortgagor's share of the monthly payment amount.

- B. Written Notice To Mortgagor. The notice to the mortgagor should include, but not necessarily be limited to, the following information:

1. the total monthly mortgage payment, excluding items not required by the mortgage (such as premiums for life and/or disability insurance);
2. HUD's share of the mortgage payment and whether it was computed under "Formula One" or "Formula Two";
3. the mortgagor's share of that payment;
4. any additional amounts that must be paid by the mortgagor in connection with the mortgage payment which was excluded in Item 1 above (such as premiums for life and/or disability insurance);
5. the monthly gross income used to calculate the assistance payment for the purpose of providing a bench mark to help the mortgagor know when to report increases of \$50 or more per month;
6. the due date of the first payment due from the mortgagor which reflects the increase.

**10-17 RETENTION OF DOCUMENTATION (24 CFR 235.365).** Form HUD-93114 and all other pertinent records must be in the mortgagor's case file for the life of the insured mortgage plus three years. In the event the mortgage is transferred to another mortgagee or servicer, and/or assigned to HUD, this documentation must remain a part of the mortgagor's case file and must be conveyed to the new mortgagee, servicer, and/or HUD which shall retain the entire case file for the life of the mortgage plus [seven] years.

**10-18 SUSPENSION OF ASSISTANCE PAYMENTS (24 CFR 235. 375).**

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1 A. Events Which Require Suspension. Events listed below (and are also given under Item 15  
2 of Form HUD-93114 require the suspension of assistance payments. Effective dates are  
3 also given as to when each is to be suspended.

- 4 1. When the mortgagor or cooperative member ceases to meet the occupancy criteria for  
5 continued assistance;

6 Effective Date: the first day of the month following the date the mortgagor or  
7 cooperative member ceased to meet the criteria;

- 8 2. The mortgagee determines that the mortgagor or cooperative member ceases to  
9 qualify for assistance payments because of income increases enabling the mortgagor  
10 or cooperative member to pay the full monthly payments using 20 or 28 percent  
11 (whichever applies) of the family income.

12 Effective Date: the date that the mortgagor received the increase in family income  
13 which enabled payment of the full monthly mortgage payment with 20 or 28 percent  
14 of the adjusted gross family income;

- 15 3. The required recertification of occupancy, employment, income and family  
16 composition cannot be obtained from the mortgagor.

17 Effective Date: For annual recertifications, the assistance payment contract must be  
18 suspended if the recertification Form HUD-93101 has not been received 30 days after  
19 the anniversary date, or the disclosure and verification of the Social Security numbers  
20 are not provided. For other required recertifications, the contract is suspended as of  
21 the first day of the month following expiration of the 30-day period given the  
22 mortgagor for recertification.

23 NOTE: Assistance payments are not to be suspended when a mortgagor requests  
24 recertification due to a reduction in income (i.e., optional recertification), and then  
25 fails to recertify.

- 26 4. Mortgage obligation or cooperative membership is assumed by a party before  
27 eligibility has been established.

28 Effective Date: The first day of the month following the date on which the seller fails  
29 to meet the occupancy criteria as set out in paragraph, or the assumptor assumes the  
30 mortgage or cooperative membership, whichever is earlier.

- 31 5. Foreclosure is initiated.

32 Effective date: The first day of the month following the date the first legal action  
33 required by state law is taken by the mortgagee's attorney to foreclose on the  
34 mortgage.

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1 B. Suspension Notification Required. A notice shall be sent to the mortgagor advising of the  
2 suspension when:

- 3 1. the suspension of assistance payments is the result of a mortgagor being able to make  
4 the full monthly payment using the appropriate 20 or 28 percent of family income;  
5 2. the mortgagor fails to submit a required recertification; or  
6 3. the mortgagor fails to meet the disclosure and verification requirements for Social  
7 Security numbers in connection with a recertification.

8 C. Content Of Suspension Notice. The notice to the mortgagor must include the following:

- 9 1. the date of the suspension;  
10 2. the reason for suspension (as stated in Paragraph 10-18A);  
11 3. the mortgagor's total required monthly mortgage payment;  
12 4. a statement advising that for a period of 3 years immediately following the  
13 suspension, assistance payments may be reinstated at any time within that 3-year  
14 period if:  
15 a. circumstances occur which would eliminate the reason for the suspension; and  
16 b. provided that another event (listed in Paragraph 10-18A) has not taken place  
17 which would in itself require that the assistance payment contract continue to be  
18 suspended.

19 D. Reinstatement Effective Dates. A suspended assistance payment contract shall be  
20 reinstatement as follows:

- 21 1. Suspension Due To Mortgagor's Non-occupancy Status. Assistance payments may be  
22 reinstated effective with the first monthly billing after the mortgagee receives Form  
23 HUD-93101 notification that the mortgagor meets the occupancy requirement.  
24 2. Suspension Due to Over-Income Mortgagor. Assistance payments may be reinstated  
25 effective the first day of the month after the mortgagee receives Form HUD-93101  
26 notification that the mortgagor is no longer "over income" and meets all other  
27 continued eligibility criteria.

28 NOTE: Reinstatement may be as a result of a reduction in the mortgagor's family  
29 income and/or due to an increase in the total monthly mortgage payment (such as an  
30 increase in amount being escrowed).

- 31 3. Suspension Due To Mortgagor's Failure to Recertify. Assistance payments may be  
32 reinstated effective the first day of the month after the mortgagee receives the  
33 required Form HUD-93101.  
34 4. Suspension Due To Mortgagor's Failure to Disclose and Verify Social Security  
35 Numbers (24 CFR 235.375(b)(4)). Assistance payments may be reinstated effective

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the first day of the month after the mortgagee receives the social security number information.

5. Suspension Due To Initiation of Foreclosure. Upon the withdrawal of foreclosure action, assistance payments may be reinstated retroactively to the date of suspension provided that, during the period the assistance payments were suspended, the mortgagor continued to meet all other criteria for receiving assistance payments.

a. Negotiation of Reinstatement Terms. The terms of reinstatement of the mortgage (i.e., whether the delinquency is to be paid in a lump sum, or additional sums are to be paid each month until the mortgage is current etc. ) may be negotiated between the mortgagee and the mortgagor. However, the terms agreed upon must be realistic and may not affect the monthly mortgage payment on which the Formula One assistance payment is based.

b. Reimbursement of Foreclosure Costs. Mortgagee retains the right to be reimbursed by the mortgagor for any costs incurred with respect to the withdrawn foreclosure action. However, these costs must be kept separate and apart from any Section 235 assistance. These costs may not be added to the monthly mortgage payment used to calculate the assistance payments and may not be billed to HUD as a separate item.

### 10-19 TERMINATION OF ASSISTANCE PAYMENT CONTRACT (24 CFR 235.375).

A. Events Which Require Termination. Events are listed below (and also given under Item 16 of HUD-93114) which require the termination of the assistance payment contract:

1. when the contract of mortgage insurance is terminated;

EXCEPTION: The assistance payment contract is not terminated because HUD accepts an assignment of the mortgage.

2. the mortgage is assumed by a mortgagor or cooperative member who is not eligible for assistance; or

3. the assistance payment contract has been properly suspended for three consecutive years without the subsidy being reinstated within that three-year period of suspension; or

4. when the assistance payment contract for Section 246 10-year mortgages terminate unless extended by the Secretary.

B. Termination Effective Dates. Assistance payment contracts terminated for the events cited in the preceding paragraph shall be made effective the first day of the month following the date of the event which requires the termination of the contract.

C. Contracts Terminated In Error. Where the assistance payment contract is terminated in error, the mortgagee shall reinstate the contract immediately upon discovering the error.

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Form HUD-93114 must be submitted with the box checked under Item 17(1). (Item 17(1) denotes “Terminated in Error” as the reason for the reinstatement.) Documentation of the error is to be retained in the mortgagor’s case file for the life of the mortgage.

NOTE: Once a Section 235 assistance payment contract has been properly terminated it may not be reinstated.

**10-20 ESCROW ACCOUNTS.** Basically escrow accounts for Section 235 mortgages are serviced the same as escrow accounts for other insured mortgages (i.e., in accordance with procedures discussed in Chapter 2). However, certain differences will be encountered. Mortgagees must determine which escrow items and/or what portion of the premium for an acceptable escrow item may be included in the total monthly mortgage payment prior to computing the amount of subsidy the mortgagor is entitled to under the Section 235 program. Guidance for making this determination is as follows:

A. Escrow Items Which May Be Included In Assistance Computations. Only certain items required under the mortgage may be included in the assistance computations. The escrow items that are acceptable, and the guidelines for determining the acceptable portion of the premium for that escrow item (if the entire amount cannot be included) are listed below:

1. Hazard Insurance. Only the cost of either the standard fire and extended coverage or basic homeowner’s policy may be included in the assistance calculations. If a basic homeowner’s policy is used, the mortgagee must be sure that any premiums for other items, such as cars, boats or other properties are not included in the assistance calculations. If the cost of the basic homeowner’s policy appears excessive, the mortgagee must contact the agent and establish the cost of a standard fire and extended coverage policy and use the lesser of the two.

NOTE: Do not include disability or life insurance premiums.

2. Flood Insurance. The entire premium may be included in the computation if the insurance is required by HUD or the mortgagee.
3. Taxes. The entire amount for taxes and special assessments which are levied by a government body may be included in the assistance calculations. Caution, specified assessments may be payable over several tax years. Only the prorated portion due for a specific tax year may be included.

NOTE: Do not include ground rents, assessments by mortgagors’ associations, and special assessments levied by persons or private organizations.

B. Additional Disclosures Required Prior To Closing. Prior to closing, mortgagees must make mortgagors aware of the following:

1. the availability of any tax exemption (i.e., available to the mortgagor at the time of closing) for which the mortgagor may qualify;

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2. that the responsibility for applying for the exemption is that of the mortgagor;
3. that their assistance payments will be computed based on the assumption that the mortgagor will be receiving the tax exemption for which they qualify;

#### C. Adjustment Of “Excessive” Surpluses And Shortages. Where an escrow analysis reveals an “excessive” surplus or an “excessive” shortage, a retroactive analysis must be performed.

NOTE: Definition of “Excessive” Surpluses and Shortages. An “excessive” surplus or shortage is defined as any amount that is greater or less than requirements by more than 15 percent of the actual disbursements from the account during the most recent full year. Before applying the 15 percent rule, the mortgagee may add one-sixth to the actual disbursements if it has chosen to maintain the surplus permitted in Chapter 2 of this Handbook.

#### D. When Retroactive Adjustments Are Required. Retroactive adjustments must be made at the following times:

1. When The First Analysis Is Performed After Settlement. If a shortage or surplus is discovered at this time, the shortage or surplus was probably caused by an incorrect amount being collected at settlement to establish the escrow account.

NOTE: If the cause is due to an improper amount being collected at settlement, HUD would not be billed for any portion of the shortage or refunded any portion of the surplus.

2. When The Escrow Analysis Reveals an “excessive” surplus or shortage Allowed (as stated in the “NOTE” under Paragraph 10-20C).
3. When The Mortgage Is Being Assumed Or Paid In Full. Any necessary adjustment revealed by the required escrow analysis must be made prior to completion of either of these transactions. However, if this is not possible and/or the mortgagee later discovers an adjustment should have been made for underpaid assistance, make the appropriate refund to the mortgagor and bill HUD for the underpayment amount using an adjustment transaction Code 2 on the next regular month's billing Forms HUD-93102 and HUD-300. The specific reason for adjustment must be provided in Column 3.

For example, underestimated tax escrow. The beginning and ending effective periods of the adjustment (month and year) must be included in the reason for adjustment in Column 3 on Form HUD-300. A copy of the escrow analysis clearly depicting the cause of escrow shortage and the period must accompany Forms HUD-93102 and HUD-300.

4. When The First Escrow Analysis Of A Suspended Or Terminated Contract Is Performed.

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5. When A Prospective Adjustment Would Reduce Assistance To Zero. (A retroactive adjustment is required to confirm the proper suspension of the assistance payments contract.)

E. Prospective Adjustments. Except as cited above, the mortgagee may exercise its option to make prospective adjustments.

F. Adjustment Procedure. Regardless of whether the adjustment is to be prospective or retroactive, the procedure is the same:

1. Adjust the "Formula One" Assistance Payment.

- a. Determine the exact amount needed in order to make proper disbursements as they become due;
- b. Determine if there were any reported changes (i.e., valid recertifications submitted to the mortgagee) in the mortgagor's household income during the period for which escrow is being collected;
- c. Recalculate the "Formula One" assistance payment for any period where the income differed;

2. Verify Accuracy of the "Formula Two" Assistance Payment. If there was an anniversary of amortization during the period, the "Formula Two" payment should have been adjusted at that time because of the change in MIP. If no adjustment was made, the "Formula Two" payment must be recomputed for the period after that anniversary.

NOTE: A common error to look for when verifying Formula Two computations is the use of the wrong column in the Section 235 Factor Table Amortization Year - Formula Two when determining the anniversary factor. The first column on each page of this Factor Table is the factor for the first year (the origination factor) -- not the factor for the first recertification.

For example, to compute the Formula Two assistance for the first annual recertification of a mortgage, the factor shown in the 2nd column would be the correct factor to use.

3. Compare the Two Results. For each period where the mortgagor's household income differed, the smaller of the recomputed "Formula One" assistance payment and the correct "Formula Two" assistance payment is the amount that HUD should have been billed. Total the correct payments for the entire disbursement period for which money was being collected and compare these payment amounts with the amounts actually billed. The difference is the overpayment or underpayment of assistance.

**10-21 BILLING FOR ASSISTANCE/HANDLING CHARGES.** In order to receive Section 235 Original, Revised, Revised with Recapture or Revised, Recapture/10 Program assistance payments and handling charges, mortgagees must submit billings to HUD on a monthly basis

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1 using an original and one copy of Form HUD-93102, Mortgagee's Certification and Application  
2 for Assistance or Interest Reduction Payments. Both the original and the copy of the Form-HUD-  
3 93102 must contain original signatures of an authorized mortgagee official.

4 NOTE: Only one Form HUD-93102 per mortgage will be accepted for processing each month  
5 regardless of the mortgagee's servicing organization or billing procedures. Form HUD-93102  
6 will be returned unprocessed if it is not accompanied by Form HUD-300 detailing as required all  
7 billing amounts included in Blocks 1, 2, 3 or 5 on Form HUD-93102.

8 A. Time Frame For Submitting Form HUD-93102. The Form HUD-93102 must be  
9 submitted to HUD (at the exact address shown on the back of the Form) no earlier than  
10 the 5th and no later than the 20th of each month in accordance with the instructions  
11 printed on the back of this Form.

12 NOTE: Adjustment amounts determined necessary subsequent to submission of a Form  
13 HUD-93102 for a given month must be included on the next regular month's billing on  
14 the Form HUD-93102 line(s) provided for billing adjustment amounts. Duplicate Forms  
15 HUD-93102 submitted in the same month will be returned to the mortgagee unprocessed.

#### 16 B. Submission/Completion Of HUD-93102.

17 1. A Single Form HUD-93102 For The Total of All Section 235 Program Assistance  
18 Payment Requests. One billing must be submitted on Form HUD-93102 which  
19 includes billing amounts for all Section 235 assistance payments due for either the  
20 Original program in Block 1, the Revised program in Block 2, the Revised with  
21 Recapture program in Block 3, or the Revised Recapture/10 program in Block 5. The  
22 billing must be submitted with an original and one copy of Form HUD-93102. Both  
23 the original and the copy must contain original signatures of an authorized mortgagee  
24 official. Failure to submit the original and a copy will cause payment processing  
25 delays.

26 NOTE: Mortgagees are no longer required to submit two separate Forms HUD-93102  
27 for Section 235 assistance payments.

28 The current Form HUD-93102, dated March 1988 must be used. Expired Forms  
29 HUD-93102 will be returned unprocessed.

30 If a billing is resubmitted for any reason, it must be clearly marked "Resubmission"  
31 on its face.

32 Payments will be made to the servicer identified in HUD's records regardless of any  
33 directions to the contrary that may be inserted on the billing form. HUD will only  
34 send payments to the servicer of record. Form HUD-92080, Mortgage Record Change  
35 must be submitted in accordance with Chapter 6 to report a change of servicers.



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2. Adjustments To The Regular Monthly Billing Amounts. The adjustment Line 2 in each Block 1, 2, 3 or 5 on Form HUD-93102 must be used to request retroactive payment of assistance for prior months.

Line 1 in Blocks 1, 2, 3 or 5 should include the total amount of assistance for the current billing period only.

Any billing amounts included on an adjustment Line 2 on Form HUD-93102 must be reflected as adjustment transactions using transaction Code 2 listed on Form HUD-300 should balance with the sum of the adjustment amounts on Lines 2 in Blocks 1, 2, 3 or 5 on Forms HUD-93102. Failure to verify that the adjustment amounts and the regular billing amounts on Form HUD-93102 balance with transaction code 1, regular billing and transaction Code 2, adjustment billing amounts on Form HUD-300 will cause payment processing delays.

3. Prior month billing amounts, adjustment transaction Codes 2. Prior month billing amounts must reflect the beginning and ending effective period (month and year) and an explanation of adjustment code in Column 3 as defined below. Any adjustment must also be supported by documentation requirements as defined below.

Reason for Adjustment	Adjustment Code	Documentation Required
Reinstatement of after suspension or termination in error	1	<a href="#">HUD-93114</a>
Reinstatement after borrower's failure to recertify timely	2*	HUD-93114, <a href="#">HUD-93101-A</a>
Handling charges returned due to mortgagee's failure to meet contractual obligations	3	None
Suspension	4	HUD-93114
Termination	5	HUD-93114
Escrow Shortage	6	Escrow Analysis
Escrow Surplus	7	Escrow Analysis
Income Increase	8	HUD-93101-A, <a href="#">HUD-93101</a>
Increase Decrease	9	HUD 93101-A, HUD-93101

NOTE: If more than one explanation of adjustment code applies to a single transaction, all applicable codes should be recorded in Column 3 on Form HUD-300 and all applicable documentation should be submitted.

Failure to identify the period of billing, the explanation of adjustment code or the documentation required, as defined above will cause non-payment of assistance for

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the affected cases. The mortgagee will have to re-bill non-paid cases on the next monthly billing. Payment may not be requested on a second bill for the same month.

Adjustment Code 2 must not be used in connection with the 7% interest penalty assessed due to fraud, misrepresentation and/or failure to meet contractual obligations. The 7% penalty must be submitted to HUD in accordance with Paragraph 10-29A.

C. Submission/Completion Of Form HUD-300. A Form HUD-300, Monthly Summary of Assistance Payments Due Under Sections 235(b), 235(j), or 235(i), or of Interest Reduction Payments Due Under Section 236, must accompany the completed Form HUD-93102.

1. Mortgagees using facsimile versions of Form HUD-300 must include on the modified version, all data required on the actual Form HUD-300.
2. Any transaction Code 1, current month's regular billing amount which is more or less than the amount billed in the prior month must be supported by appropriate documentation as follows:

Reason for Change	Documentation Required
Case reinstated	Form <a href="#">HUD-93114</a> and unless suspended in error, Forms <a href="#">HUD-93101-A</a> and <a href="#">HUD-93101</a>
Income increase or decrease	Form HUD-93101-A
Monthly mortgage payment amount changed due to escrow shortage or surplus	A copy of the escrow analysis clearly depicting what caused the required decrease or increase in escrow (e.g., taxes underestimated by \$20 per month)

D. Review For Billing Accuracy. HUD will review billings for propriety, legality and correctness. When a billing is received that is not signed by an authorized mortgagee official, not accompanied by a Form HUD-300, and/or requests amounts which cannot be reconciled to FHA/HUD case detail provided on Form HUD-300, it will be returned to the mortgagee unpaid. No payment will be made until the mortgagee has submitted a corrected billing for that month.

When the amount billed for a case is more or less than the amount billed in the prior month, no payment will be made for the case unless the billing is accompanied by the required Form HUD-93101-A, escrow analysis, or HUD mortgage recapture approval letter, whichever is applicable.

When a mortgagee determines that an income increase is not retroactive, as reflected by the "effective date of payment change" entered in Block C (7) on Form HUD-93101-A (i.e., the mortgagor's income increase was not received prior to the date that the mortgagee received the mortgagor's recertification), a copy of HUD-93101 must be

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1 attached to the Form HUD-93101-A for accounting office verification of the overpaid  
2 subsidy determination.

3 When the effective date of payment change reflects that an income decrease is  
4 retroactive, Form HUD-93101 must be attached to Form HUD-93101-A for verification  
5 of the underpayment determination (also see Paragraph 10-31).

6 No payment will be made on cases when non-retroactive subsidy decrease, or retroactive  
7 subsidy increase amounts as described above are not documented for verification by  
8 attachment of both Forms HUD-93101-A and HUD-93101 to the billing Form HUD-  
9 93102.

10 Subsidy increases due to escrow shortage will not be paid for any case unless:

- 11 1. the billing is accompanied by an escrow analysis; and
- 12 2. for each escrow item disbursed which was included in the subsidy amount  
13 calculation, copies of the canceled checks and invoices for accounting office  
14 verification of the shortage computation are attached.

- 15 E. Mortgagee Liability (24 CFR 235. 361(b)). Mortgagees are responsible for the accuracy  
16 of the billings and shall be held liable for fraud or false certification made on these  
17 billings (see Paragraph 10-28B). All billings must be signed by an authorized mortgagee  
18 official. Improper billings may result in the imposition of substantial financial penalties  
19 as the Program Fraud Civil Remedies Act applies to assistance payments.

20 NOTE: Mortgagee signing officials should give special attention to the meaning of the  
21 certification signed by authorized mortgagee officials on Form HUD-93102. The signing  
22 official is certifying, subject to the Program Fraud Civil Remedies Act, that:

- 23 1. the assistance payment amount requested for each case included in the bill has been  
24 correctly calculated both for the amounts and the periods claimed due in accordance  
25 with the provisions of this Handbook;
- 26 2. the bill does not include any amounts on behalf of mortgagors who have not complied  
27 with recertification requirements within the time limits specified in this Handbook, or  
28 in the manner set forth in 24 CFR 235. 350;
- 29 3. the bill does not include amounts on behalf of mortgagors not eligible for assistance  
30 in accordance with provisions set forth in 24 CFR 235 and as set forth in this  
31 Handbook;
- 32 4. no amount in the billing has been previously claimed in an outstanding bill,  
33 determined by HUD as not payable in a previous bill (i.e., determined not payable  
34 after a HUD review of required billing support documents) or paid in a previous bill;
- 35 5. supporting details, records and worksheets, together with a copy of the applicable  
36 billing are being held in the mortgagee's file; and
- 37 6. all aforementioned documents will be furnished or made available upon request of an  
38 authorized official of HUD or of the Comptroller General of the United States. A

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determination made upon review that certification to the above was false may result in the imposition of substantial financial penalties.

F. Receipt Of HUD's Payment. When a billing is submitted to HUD in accordance with outstanding instructions and within the time frame shown in Paragraph 10-21, payment should reach the mortgagee on or about the first day of the following month.

G. Monthly Billing. HUD will process payment for only one monthly billing form. Duplicate requests will be returned to the mortgagee unprocessed.

1. Monthly billings must be submitted on the current Form HUD-93102, dated March 1988 which may be obtained from the Government Printing Office. Obsolete Forms HUD-93102 will be returned unprocessed.

2. Recertifications of income which accompany the billing must be submitted on the current Form 93101-A, dated March 1990

3. Monthly billings should include:

- a. the assistance amount due for the current billing period on Line 1 of the appropriate Block 1, 2, 3 or 5; plus
- b. the assistance amount for any prior months the mortgagor was entitled to assistance but for which the assistance amount was not paid on a previously submitted Form HUD-93102 or included on an outstanding Form HUD-93102 on Line 2 of the appropriate Block 1, 2, 3 or 5; minus
- c. adjustments for overpaid amounts due HUD which is also on Line 2 of the appropriate Block 1, 2, 3 or 5;
- d. the net total of Line 1 and Line 2 on Line 3 of the appropriate Blocks 1, 2, 3 or 5; and
- e. the summary total from Line 3 of Blocks 1, 2 and 3 in Block 4.

NOTE: Overpaid subsidy identified in response to HUD conducted mortgagee reviews requiring retroactive assistance payments reviews to be performed by mortgagees should not be included on the regular monthly billing. The required review must be completed within the time frame specified by HUD's (or its agent's) mortgagee review report. Overpayment must be submitted on a separate billing clearly denoted in large print at the top of the billing as a "Retroactive Review Billing".

This billing must be accompanied by:

- (1) a check made payable to HUD for the total overpayment amount; and
- (2) a mortgagee review findings report which lists in columns, the following information:

(a) the name of each overpaid mortgagor:

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- (b) the FHA case number;
- (c) the month and year of the beginning and ending period of overpaid subsidy (i.e., 3/86-5/88);
- (d) the overpayment amount;
- (e) an explanation of:
  - i. the cause of overpayment (using explanations of adjustment codes from Paragraph 10-21);
  - ii. the date of the event which resulted in the overpayment; and
  - iii. the effective period of the adjustment.
- (f) the mortgagee's calculation of the overpayment amount; and
- (g) attachments Forms HUD-93101-A, HUD-93101, HUD-93114 (one HUD-93114 to suspend the assistance payments and one to reinstate the assistance payments for retroactive suspensions resulting in overpayments) and/or escrow analyses as applicable to the explanation given for overpayment.

Copies of the check and Forms HUD-93102 and HUD-300 must also be sent to the appropriate HUD local Office that conducted the review.

#### H. Rounding Off Billing Amounts. At the option of the mortgagee, assistance may be billed in either of the following ways:

- 1. using the exact amount to which the mortgagor is entitled; or
- 2. using the amount arrived at after rounding off the exact amount to the nearest dollar (i.e., \$. 01-\$. 49 round down to zero; \$0. 50-\$. 99 round up to \$1. 00).

Regardless of which method is used when billing HUD, mortgagees must be consistent and must use the same method (i.e., rounding off or using the exact amount) must be used for all amounts billed and used when crediting the individual mortgagor's account.

#### I. Billing Of Handling Charges. The mortgagee is entitled to a \$3. 00 handling fee per month, per active Section 235 mortgage account.

**10-22 ASSUMPTIONS.** Assistance may be continued on behalf of an assumptor if that assumptor meets all qualifying requirements as of the day the mortgage assumption actually takes place (i.e., the day the mortgage is executed by the assumptor at closing).

#### A. Assistance Eligibility. The information on Form HUD-93100-4 must reflect that, on the day of closing, the assumptor's status qualified him/her for assistance based on the eligibility criteria for new mortgagors.

NOTE: The assumptor's household is not required (as the original mortgagor was) to have five or more members if the property has four or more bedrooms.

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1 B. Additional Underwriting Requirements For Section 235 Assumptions. Assumptions of  
2 Section 235 mortgages are treated the same as those insured under any other section of  
3 the Act except for the following additional underwriting requirements:

- 4 1. where subsidy eligibility must be determined, the assistance application (Form HUD  
5 93100-4) is to be reviewed before the credit application and, if assistance is to be  
6 authorized, the amount of assistance is to be used as income in the credit evaluation;  
7 and
- 8 2. if the firm commitment to insure the original mortgage or direct endorsement  
9 underwriter's credit approval was issued on or after May 27, 1981, the assumptor  
10 must sign, at closing, a note agreeing to pay any recapture of assistance that may be  
11 due HUD in order to satisfy this lien on the property (24 CFR 235.12). (See Chapter  
12 11).

13 C. Mortgagee Responsibility. In addition to enforcing the [HUD's creditworthiness  
14 requirements], when the mortgagee becomes aware there has been or will be an  
15 assumption, the following action must be taken:

- 16 1. make the assumptor aware that he/she may be eligible for assistance;
- 17 2. prepare the necessary documents to determine eligibility for assistance (if assumptor  
18 wishes to be considered for assistance);
- 19 3. where the assumptor appears to be eligible for assistance, processing must be delayed  
20 until the local HUD Office has determined whether assistance can be approved in  
21 order that any assistance may be considered in the credit analysis;
- 22 4. make the assumptor aware of his/her recapture responsibilities (as listed below) if the  
23 firm commitment (or direct endorsement credit approval) was issued on or after May  
24 27, 1981:
  - 25 a. there is an existing lien against the property in favor of HUD which shall remain  
26 there until satisfied;
  - 27 b. the recapture will become due immediately due if he/she does not:
    - 28 (1) qualify for assistance;
    - 29 (2) agree to accept the assistance for which he/she qualifies;
    - 30 (3) agree to execute a new note at closing;
  - 31 c. the recapture becomes due once the assumptor acquires title to the property.  
32 He/she will be held liable for the full amount required to satisfy HUD's lien on  
33 the property;
- 34 5. where appropriate, take the necessary action to obtain and prepare the required  
35 documentation and collect the amount due HUD to satisfy the recapture lien in  
36 accordance with Chapter 11; and
- 37 6. suspend the assistance payments contract if the mortgage is assumed before HUD  
38 approves the assumptor for assistance.

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D. HUD Responsibility. In addition to enforcing [HUD's creditworthiness requirements], when HUD becomes aware that there has been or will be an assumption, it will:

1. determine the assumptor's eligibility for assistance;
2. if eligible, determine the initial amount of assistance for which the assumptor qualifies;
3. where appropriate, determine whether the assumptor's credit qualifies (if the case is not being processed by a direct endorsement mortgagee);
4. where appropriate, take the necessary action to:
  - a. obtain and prepare the required documentation to determine the recapture amount due in order to satisfy the Section 235 lien;
  - b. collect and deposit the amount due HUD;
  - c. prepare the satisfaction of the recapture lien in accordance with instructions provided in Chapter 11;
  - d. obtain the signatures of an authorized HUD official and get the satisfaction notarized; and
  - e. forward the executed and notarized satisfaction to the mortgagee in accordance with instructions outlined in Chapter 11.

E. Cut-off/Start-up Dates For Assistance. Assistance should be cut off and started as follows:

1. When assumptors are approved before acquiring title:
  - a. subsidy will cease on behalf of the seller effective the first day of the month after he/she moves out of the property;
  - b. subsidy will begin on behalf of the approved assumptor effective the first day of the following month (i.e., the month after the seller moved out) PROVIDED the assumptor has moved into the property and has acquired title to the property by the effective date.

NOTE: For this purpose, the acquisition date may be considered as the date the deed was recorded unless the mortgagor can demonstrate an earlier date.

- c. if the assumptor does not acquire title and occupy the property within 90 calendar days after the seller moves out, the assistance payments must be suspended.

NOTE: Suspension will continue until the first day of the month after the assumptor has moved into the property and has acquired title to the property.

2. When assumptors are approved after acquisition of title:

- a. subsidy will cease on behalf of the seller effective with the first day of the month after occupancy ends;

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b. subsidy will begin on behalf of the assumptor effective (depending on the length of delay between the assumption and application for assistance) as follows:

(1) Delay of 90 Days or Less. If no more than 90 days elapse between title acquisition and application for assistance, payments shall be made retroactive to the first day of the month following title acquisition or occupancy of the property, whichever is later.

(2) Delays of More Than 90 Days. If more than 90 days elapse between title acquisition and application for assistance, payments shall be made effective from the first day of the month following application, PROVIDED the assumptor has title and occupies the property when the application is submitted and through the time that the application for assistance is approved.

**10-23 DELINQUENCIES AND DEFAULTS.** Mortgagees are expected to treat Section 235 mortgages in the same manner as other insured mortgages when they become delinquent. The mortgagor remains eligible for assistance until the mortgagee takes the first legal action required to initiate foreclosure or until some other event requires suspension or termination of the assistance payments contract.

A. Partial Payments. Assistance payments for periods when the mortgagor fails to make his/her share of the mortgage payment are not to be considered partial payments of the mortgagor's share of the full monthly mortgage amount. HUD assistance payments must be accepted regardless of the amount or the length of the delinquency. Before foreclosure may be started, all partial payments of the mortgagor's share must be applied toward the unpaid monthly installments, beginning with the earliest unpaid installment.

1. All assistance payments earned up to the time of the action to foreclose the mortgage must be billed for and applied to complete the monthly installments in the order in which they become due, e.g., to MIP, escrow, interest, and principal, beginning with the earliest unpaid installment. All unearned assistance payments should be applied as a reduction towards the amount billed HUD monthly on Form HUD-93102.

2. Reinstatement of the account by the mortgagor may not be delayed pending receipt of earned but unpaid assistance payments, and those payments must be billed for promptly when the mortgagee decides to accept reinstatement from the mortgagor.

NOTE: The rules governing return of partial payments in Paragraph 7-9 apply only to the mortgagor's share of the payment, not to the portion that is paid by HUD.

B. Forbearance. Assistance payments are not affected by forbearance agreements. They are treated as partial payments as described in the preceding paragraph. During these periods, however, the mortgagor must maintain eligibility for assistance (i.e., by continuing to occupy the property, providing required recertifications, etc. ) and the mortgagee must continue to make adjustments to the amount of assistance for which the mortgagor is



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entitled as though the mortgagor were making his/her portion of the monthly payments as required.

C. Special Forbearance. Assistance payments are not affected by special forbearance agreements. The special forbearance agreement:

1. shall be prepared in accordance with instructions outlined in Paragraph 8-4; and
2. shall include an additional provision recognizing that the assistance payments will continue to be adjusted as required under the Section 235 program;

D. Recasting. When a Section 235 mortgage is recast, the monthly payment due under the mortgage as recast becomes the base for calculating both "Formula One" and "Formula Two" assistance payments. The new principal amount after recasting is considered the original mortgage amount for amortization purposes and the new maturity date governs.

NOTE: MIP is not affected by recasting. Regardless of the new unpaid principal balance, the MIP continues to be calculated on the original scheduled unpaid balances.

**10-24 ASSIGNMENT TO HUD.** Assistance payments are not affected by an assignment of the mortgage to HUD. The assistance payment contract shall remain in effect up to the date the assignment is filed for record.

NOTE: The last assistance payments for which the mortgage should bill HUD are those for the month immediately preceding the month in which the mortgage is assigned.

**10-25 PREPAYMENTS.** Section 235 prepayments shall be as follows:

A. Partial. If partial prepayments have been applied to reduce future monthly payments (see Paragraph 5-3A2), both "Formula One" and "Formula Two" must be recalculated based on the revised payments.

B. In Full. The last assistance payment payable will be for the month the mortgage was paid in full presuming the mortgagor was in occupancy and was the legal owner on the first day of the month.

**10-26 TRANSFER OF SERVICING.** A transfer of servicing has the following affect on a Section 235 mortgage:

A. Assistance Eligibility. A mortgagor's eligibility for assistance will not be affected;

B. Recertifications. Annual recertification may be affected if:

1. the mortgagees involved in the transfer use different anniversary dates for recertification; and
2. the transfer would result in a lapse of more than 15 months between recertifications.

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C. Additional Recertification Required. Where the situation described in Paragraph 10-26B occurs, the new mortgagee or servicer must require recertification twice in the first year after acquisition—one on the anniversary date used previously by the former mortgagee or servicer and the second one on the anniversary date that is being used by the new mortgagee or servicer.

D. Additional Notice To Mortgagor. Within 10 days of the transfer, the new mortgagee or servicer must:

1. advise the mortgagor of the transfer of the mortgage; and
2. provide the mortgagor with the new recertification schedule.

NOTE: The above disclosures may be included with the notice of servicing transfer required by Paragraph 6-11B or sent as a separate notice. However, if the above disclosure is sent as a part of the normal notice required by Paragraph 6-11B when a mortgage is transferred, the notice must be received by the mortgagor at least 10 days before the due date of the first payment to the new mortgagee or servicer.

E. Seller's/Purchaser's Servicing Responsibility. When an insured mortgage is sold, the purchasing mortgagee succeeds to all rights and becomes bound by all of the obligations of the selling mortgagee under the contract of mortgage insurance. Purchasing mortgagees should be aware that they will be held fully responsible to HUD financially for errors or omissions on the part of the selling mortgagee (or its agents), discovered after the transfer is reported, even though those errors or omissions may have taken place before it was reported to HUD.

**10-27 POSSIBLE VIOLATIONS OF LAW OR REGULATIONS.** Mortgagees are not expected to seek out evidence of wrongdoing on the part of mortgagors. Neither are they expected to extensively investigate allegations of wrongdoing brought to their attention. However, if a matter can be reasonably explained and/or resolved without extensive investigation, those facts should be used in computing assistance.

A. Mortgagee Responsibility.

1. General. The mortgagee's actions taken independently of instructions from HUD must always be exercised with due care, using the best information available including recent information reflected in the mortgagor's recertification, with its supporting verifying data.
2. Report Clues/Evidence of Mortgagor's Possible Wrongdoing. Possible clues and/or evidence of possible wrongdoing on the part of the mortgagor are to be forwarded to the local HUD Office for whatever action it deems appropriate. Until notified by the local HUD Office as to the action that will be taken (if any), the mortgagee should make the appropriate adjustments in assistance payments as instructed in Paragraph 10-27A1. Such clues and/or evidence may include, but are not limited to, the following:

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- a. a verification of income showing a date of employment or an increase in income much earlier than the date(s) certified to by the mortgagor which cannot be reconciled;
- b. an application for another type of loan which shows a new spouse with income and/or other additional sources of income not shown in the recertification;
- c. a disclosure, during negotiation of a repayment plan to cure a default, that the mortgagor or other family members have income not reported in the recertification;
- d. a name change of the person or a different person signs the recertification for which no reason is known;
- e. the receipt of allegations from either identified or anonymous sources containing enough specific information that would lead a person to believe that the recertification might contain false information; and

3. Information Not to be Reported. The mortgagee is charged with acting on its own initiative, basing its actions on the best information available (as outlined in Paragraph 10-27A1), and for documenting its files as to why a particular action was taken.

The following are the examples of cases where the mortgagee shall take appropriate action including completion of all required retroactive recertifications and therefore, need not refer the case to HUD include, but not limited to, the following:

- a. where the mortgage was insured before January 5, 1976, and the mortgagor did not report an increase in income caused by a change in the source of income of any adult family member until the first normal recertification following the increase; and

NOTE: Reason for Not Reporting to HUD—A \$50 increase (or more) per month on these mortgages does not require an additional recertification. The assistance payments are adjusted at the time of the annual recertification effective as of the date the income increase occurred.

- b. where the mortgage was insured on or after January 5, 1976, and the mortgagor failed to notify the mortgagee of changes in total family income as noted in (a) above or the mortgagor did not report a \$50 increase (or more) per month in adult family income until the annual recertification and overpaid assistance resulted.

NOTE: Reason for Not Reporting to HUD—While the mortgagor is obligated to report a \$50 increase (or more) per month in adult family income when they are received, it was reported at the time of the annual recertification. Once the mortgagee learns that such an increase did go into effect and went unreported by the mortgagor, the mortgagee is to take the necessary steps to determine when the \$50 (or more) income increased per month. Assistance must then be recomputed and the overpaid assistance refunded to HUD.

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1 B. HUD Field Office Responsibility. The HUD Field Office Manager will review any  
2 information sent in with respect to possible wrongdoing on the part of a mortgagor and  
3 will determine whether further investigation is warranted.

4 1. Where An Investigation Is Warranted. Where it is warranted, the Field Office  
5 Manager will take the necessary steps to refer a case to the appropriate HUD office  
6 for investigation.

7 2. Where An Investigation Is Not Warranted. Where administrative action is appropriate  
8 and former investigation is not warranted, the Field Office Manager will notify the  
9 mortgagee, in writing, of its decision. Written instructions will also be provided to the  
10 mortgagee as to how it should proceed with the adjustment of the assistance  
11 payments.

12 C. Office Of The HUD Inspector General. The actual conduct of investigations into possible  
13 fraud or referral of information to other agencies for further investigation and decisions  
14 relating to prosecution is the responsibility of the Inspector General. Mortgagees will not  
15 normally be advised of the progress of investigations and should make no assumptions as  
16 to their possible outcome and its impact on assistance payments.

17 **10-28 CAUSES OF OVERPAID ASSISTANCE.** Overpaid assistance exists anytime assistance  
18 is billed and paid for any amounts greater than those for which a mortgagee/mortgagor is  
19 entitled. Listed below are the most common situations which result in overpaid assistance:

20 A. Mortgagee's Failure To Meet Contractual Obligations. This occurs when the mortgagee  
21 fails to meet its obligations under the assistance payments contract as follows:

22 1. requesting a handling charge on cases when recertifications have not been requested  
23 timely;

24 2. failing to act in a timely manner when:

25 a. requesting a required recertification at the proper time;

26 b. recalculating assistance payments;

27 c. submitting Form HUD-93101-A and HUD-93114, as applicable;

28 d. adjusting subsidy payments when a recertification Form HUD-93101 is received  
29 containing information which requires suspension or adjustment of assistance  
30 payments billed;

31 e. retroactively calculating adjustments in assistance payments from the date of  
32 income increases and crediting overpaid assistance amounts to HUD when annual  
33 or interim recertifications reflect income increases;

34 f. timely requesting HUD to suspend assistance payments when mortgagors fail to  
35 respond to recertification requests within the specified time frame;

36 g. requesting reinstatements to be non-retroactive when suspensions were due to  
37 mortgagors failure to timely respond to certification requests; and/or

38 h. verifying recertified income in the manner set forth in Paragraph 10-10.

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B. Mortgagee Fraud Or Misrepresentation. This occurs when:

1. mortgagees falsify certifications on monthly billing Form HUD-93102 submitted to HUD for assistance payments (see Paragraph 10-21E); or
2. any other fraud and/or misrepresentation in the Section 235 program.

C. Mortgagor Errors Or Omissions. The most common mortgagor errors are failures (for whatever reason) to:

1. report increases of adult family income of \$50 or more per month when the mortgage was insured on or after January 5, 1976;
2. advise the mortgagee when the property is sold;
3. advise the mortgagee when he/she no longer meets occupancy or some other basic eligibility requirement; and/or
4. include an income source on a required recertification.

D. Mortgagor Fraud Or Misrepresentation. When a mortgagor fails to include income amounts or sources, and/or misrepresents occupancy or other eligibility data, on a recertification in an attempt to receive assistance for which he/she is not eligible.

### 10-29 REPAYMENT OF OVERPAID ASSISTANCE (24 CFR 235.361).

A. Overpayments Caused By The Mortgagee. The mortgagee must refund to HUD all overpaid assistance and all handling charges for each month during which there was an overpayment, plus interest computed at the rate of seven percent per annum on the entire amount from the date of the first overpayment when an overpayment results from the following circumstances:

1. fraud or misrepresentation on the part of the mortgagee; and/or
2. the mortgagee's failure to meet a contractual obligation, as described in Paragraph 10-28.

The total overpayment amount must be credited on the next month's billing on Form HUD-93102 and should include return of handling charges paid for each period of overpayment for each case. Form HUD-300, Column 3, must reflect an explanation of the overpayment cause and the affected beginning and ending period (month and year).

The 7% interest amount must be sent in a separate check made payable to HUD with an itemized listing of the 7% calculation and total interest due for each overpaid case. The check with the itemized listing should accompany the Form HUD-93102 billing.

B. Overpayment Caused By Error. When an overpayment is caused by an error on the part of the mortgagee or the mortgagor only the overpaid assistance need be refunded. The mortgagee shall refund the overpaid assistance by:

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1. reimbursing HUD the total overpaid amount on the next month's billing (on Form HUD-93102); and
2. collecting the overpaid assistance from the mortgagor in a lump sum or in installments while exercising due caution not to cause a default by the manner of collection selected (24 CFR 235.361(c)).
3. Only as a last resort should the mortgagee apply a mortgage payment or payments to the recovery of the overpaid amount.

NOTE: If the error which created the overpaid assistance was caused by the mortgagee then the mortgagee must repay HUD, however, HUD does not require the mortgagee to collect repayment from the mortgagor.

#### C. Mortgagor No Longer Obligated Under The Mortgage.

1. On cases where the mortgagor is no longer obligated under the mortgage, the mortgagee must send the mortgagor's last known address to the HUD Office having jurisdiction over the mortgage.
2. The Claims Collection Officer in the HUD Field Office is responsible for the collection activities.

**10-30 CAUSES OF UNDERPAYMENTS.** Listed below are circumstances which may result in underpayments and are the only causes for which a mortgagee may bill for underpaid assistance:

- A. math errors;
- B. using a wrong factor in calculating the "Formula Two" assistance payment;
- C. underestimating escrow requirements; and/or
- D. the mortgagee's failure to initiate an optional recertification after notification from a mortgagor of a reduction of income.

NOTE: Failure of a mortgagor to request an optional recertification at the time of a reduction in the income of an adult family member is not a justification to bill for an underpayment at a later date.

**10-31 COLLECTING UNDERPAID ASSISTANCE.** The total underpayment amount may be added to the next month's billing (on Form HUD-93102). Retroactive billings for underpaid subsidy must be accompanied by Forms HUD-93101-A and 93101, Form HUD-93114 requesting reinstatement of a suspension in error, or an escrow analysis with support documents as defined in Paragraph 10-21D.

NOTE: Underpayment requests will not be paid when the required documentation does not accompany Form HUD-93102, or the explanation of adjustment is not provided on Form HUD-300 with documentation required as defined in Paragraph 10-21B3.

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**10-32 RECORDS MAINTENANCE (24 CFR 235.365 and 235.830).** HUD Field Offices will periodically review mortgagee records to establish that assistance is being billed properly. These reviews will normally cover recertifications, verifications, billings, suspensions, terminations, documentation, and escrow analysis. In addition to the records maintenance required on other types of mortgages, mortgagees must have complete records to support the amounts billed each month on each mortgage from the time of origination through termination of assistance payments (also see Paragraph 10-17), including recapture of assistance where applicable (see Chapter 11). These records must be adequate to support every dollar of assistance billed. Where records do not exist to substantiate the amount of assistance billed, assistance will be considered overpaid and must be refunded unless the mortgagee can reconstruct adequate records to support the payments. For each case, the records must include:

- A. all initial applications (Forms HUD-93100-4) and required recertifications (Form HUD-93101 and 93101-A), with supporting verifications and other related documentation;
- B. all optional recertifications that resulted in changes in assistance, with supporting verifications and other related documentation;
- C. for each suspension, reinstatement, or termination:
  - 1. a Form HUD-93114;
  - 2. all individual escrow analyses related to overpaid or underpaid assistance; and
  - 3. individual ledgers (or other records) showing application of assistance to the account;
- D. all monthly billings (Forms HUD-93102) for assistance payments with supporting documentation for all adjustments for overpaid or underpaid assistance;
- E. for each monthly billing (Form HUD-93102), a case-by-case summary showing, for each case included in the billing, the following data elements:
  - 1. the date of endorsement for insurance;
  - 2. the original mortgage amount;
  - 3. the certified adjusted annual income used that month;
  - 4. the total mortgage payment that month;
  - 5. the "Formula One" calculation;
  - 6. the "Formula Two" calculation;
  - 7. the amount of assistance due;
  - 8. the explanation of adjustment code as provided in Chapter 10-21B3;
  - 9. the beginning and ending effective dates (month and year) of adjustment transactions Code 2;
  - 10. the handling charge; and
  - 11. the total bill.

**10-33 RESPONSIBILITY FOR TRANSFERRING RECORDS.** Mortgagees acquiring mortgages from other mortgagees and/or changing servicers are fully responsible for records that should have been maintained by the selling/transferring mortgagee or servicer.

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NOTE: If it is determined after a change of servicers that assistance has been overpaid, the servicer at the time of the discovery will be responsible for refunding the overpayment.

**10-34 REPORTING TO HUD.** For monitoring purposes, the following Section 235 reports are to be submitted to HUD Headquarters.

NOTE: These reports should not be submitted to Field Offices unless specifically requested.

A. Reports On Recertifications. A Form HUD-93101-A must be submitted on each case recertified. The appropriate address is printed on the form.

B. Ad Hoc Reporting. As needed, HUD will request information on the cumulative assistance paid on an account to date (i.e., from origination through termination of the assistance contract) to determine the amount of recapture due HUD in order to satisfy the recapture lien. Records must be maintained in such a manner as to enable the mortgagee to provide this information. Such information must be made available to HUD upon request.

**10-35 INFORMATION TO MORTGAGORS (24 CFR 203.508(c) and 235.1001).** Within 30 days after the end of each calendar year, the mortgagee must provide the mortgagor with a statement advising the following:

A. the total amount of assistance applied to the mortgagor's account during the preceding year;

B. the taxes and interest paid on the mortgagor's behalf during the year; and

C. a notice as to the probable deductibility of interest payments using substantially the language shown below:

"If you itemize deductions on your income tax returns, please read this notice. Under Section 1.163-1(d) of Federal Income Tax Regulations, you, as the mortgagor, may deduct for Federal income tax purposes, only that part, if any, of mortgage interest payments made during the year which exceeded the amount of assistance payments made by HUD during the year. You are urged to contact your tax advisor or State and local tax offices for guidance regarding the deductibility of payments on your State or local income tax returns."

**10-36 REVISED/RECAPTURE/10 PROGRAM (24 CFR 235.12).** The Appropriations Act of 1984 reactivated the Section 235 Program as revised by the Housing and Urban Rural Recovery Act of 1983. Mortgages insured under Section 235 beginning in early 1985 are identified with case number suffixes (the last three numbers) 246, 346, and 546. The assistance payments contract on these mortgages is limited by the Housing and Urban Rural Recovery Act of 1983 to 10 years after mortgage origination. When the 10 year period ends, the mortgagee must terminate the assistance payment contract, if there is not a request by the Department to continue such assistance. The assistance paid during the contract period is subject to recapture by HUD under



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certain circumstances. Procedures and requirements of these mortgages are the same as for other Section 235 mortgage except as indicated below:

A. Documentation At Origination. Assistance payments on these mortgages are disbursed and monitored using an automated system. In order to set up a new case in the automated system, the HUD Field Office must have:

1. the completed Mortgage Insurance Certificate indicating the FHA/HUD case number;
2. the separate assistance payments contract which has been executed by both HUD and the mortgagee and the "Acknowledgement of Mortgagors", signed by the mortgagors;
3. the mortgage interest rate;
4. the due date of the first principal and interest payment;
5. the mortgagee and/or servicer's complete name, address and mortgagee number assigned by HUD;

B. "Formula One" Assistance. Under this program, the "Formula One" assistance payment is the difference between the full monthly mortgage payment and 28 percent of the mortgagor's adjusted monthly family income (as opposed to 20 percent under earlier versions of the program). The actual assistance paid is still the lesser of the "Formula One" and "Formula Two" payments.

C. Recapture Of Assistance (24 CFR 235.12). In addition to the limited term of assistance, these mortgages are distinguished by a provision for recapture of assistance when the property is sold. (See Chapter 11 for detailed recapture procedures. )

D. Mortgage Assumptions. Mortgages insured under this program are assumable under the same conditions as are any other insured mortgages. However, mortgagors will not be eligible for assistance after the tenth anniversary of the first payment due under the original mortgage. Assumptors and potential assumptors should be advised of these limitations and how these limitations shall affect them.

NOTE: Allowable fees for assumptions of Section 235 mortgages are found in Chapter 4, Paragraph 4-4A3.

**10-37 ALIEN MORTGAGORS.** To be eligible for assistance, a mortgagor must be a citizen of the United States or an alien admitted for permanent residence.

A. Citizenship/Permanent Alien Status Proof Required. Evidence of this eligibility must be submitted to the mortgagee whenever:

1. there is a new application for assistance;
2. an existing cooperative membership is purchased;
3. an assisted mortgage is assumed;
4. an assisted mortgage is assigned to HUD; or
5. an assisted mortgage that has been in default is reinstated under 24 CFR 203.608.

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B. Forms Of Acceptable Proof. When any of the events in the preceding paragraph occur, the mortgagee must ask the mortgagor to provide proof of eligibility based on citizenship. Acceptable proof may include:

1. a Birth Certificate;
2. a United States Passport
3. an Alien Registration Card (i.e., "Green Card"); or
4. a Naturalization Certificate.

C. Mortgagee Certification. The mortgagee must then certify that acceptable proof as stated in the preceding paragraph has been submitted by all persons from whom it is required. NOTE: If the mortgagee cannot make this certification, the assistance payments contract must be suspended and the mortgagor notified of the consequences.

D. Fraudulent Or Invalid Documentation (24 CFR 235.361(b)). If the documentation should prove to be fraudulent, invalid or inadequate, the mortgagor will be required to repay all assistance payments to HUD. In addition, the mortgagee may be required to refund overpaid assistance payments, plus handling charges and interest.

E. When Assistance May Be Reinstated. Assistance payments may be resumed at HUD's discretion if all aliens not able to establish eligibility have moved from the property or have established eligibility.

#### ii. Recapture of Section 235 Assistance Payments

Formerly HUD Handbook 4330.1, REV-5, Chapter 11

**11-1 GENERAL.** The Housing and Community Development Acts of 1980 and 1981 changed Section 235 of the National Housing Act to allow the Secretary of the Department of Housing and Urban Development (HUD) to require recapture of all, or a portion of, the assistance payments made on behalf of mortgagors under Section 235(i) who obtain FHA-insured mortgages.

#### **11-2 MORTGAGES AFFECTED BY RECAPTURE PROVISION (24 CFR 235.12(a)).**

Section 235 mortgages are subject to a recapture where a firm commitment (or, under the Direct Endorsement Program, where the underwriter's approval of the Mortgage Credit Analysis Worksheet) was dated on or after May 27, 1981.

A. If the Firm Commitment date is on or before May 26, 1981, the first mortgage is not under the Section 235 Recapture Program, even though the settlement date occurred after May 26, 1981. The suffix of the FHA case number of mortgages insured under the first and second Section 235 Assistance Program allocations ends in the number five (5).

B. If the Firm Commitment date is on or after May 27, 1981, the first mortgage is under the Section 235 Recapture Program, even though the suffix of the FHA case number may end

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in the number five (5). The suffix for mortgages insured under the Section 235 Recapture Program ends in the numbers fifty-six (56) and sixty-six (66).

- C. If the Firm Commitment date is on or after October 22, 1984, the first mortgage is under the Section 235 Revised/Recapture/10 Program. The suffix of the FHA case number for mortgages insured under the Section 235 Revised/Recapture/10 Program ends in the number forty-six (46). (Refer to paragraph 10-36).

**11-3 METHOD OF SECURING REPAYMENT (24 CFR 235.12(d)).** The mortgagor is required to execute, at the time of closing of the first mortgage, a second note and mortgage or deed of trust (referred to as the security instrument or the HUD lien), with addendum, in favor of the Secretary to secure repayment of the assistance. The property is pledged as security for the second mortgage (i.e., the recapture lien).

**11-4 MORTGAGEE'S RESPONSIBILITY PRIOR TO INSURANCE ENDORSEMENT.** Upon making application with the mortgagee for assistance under the Section 235 program, the mortgagee shall make the mortgagor aware of the recapture provision by providing a copy of the "Notice To Buyer"

- A. Contents Of "Notice To Buyer". This notice describes:

1. the provisions of the law which requires the repayment of all, or a portion of, the assistance payments which are paid on the mortgagor's behalf (and any subsequent assumptor of the mortgage) prior to the release of the second mortgage on the property;
2. the events which will "trigger" the recapture;
3. the formula used by HUD to determine the amount of recapture due to satisfy the second mortgage;
4. the importance of retaining all paid receipts and/or
5. bills relating to improvements made to a property; and
6. the financial responsibility that is acquired by an assumptor if the mortgage is assumed.

- B. Mortgagor's Written Acknowledgement Required. At closing, the mortgagor must acknowledge that he/she has been made aware of the recapture provision by signing and dating an original and two copies of the "Notice To Buyer".

- C. Position Of Lien. It is the mortgagee's responsibility to assure that the recapture lien, drawn in favor of the Secretary, is properly recorded in the appropriate position. The recapture lien may not be junior to any lien other than an FHA-insured first lien, unless:

1. there is a second lien held by a state or local government agency required by law to hold a second lien (such as a lien to secure repayment of funds advanced under a housing assistance program to make the initial cash investment or to assist in making mortgage payments); or

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2. HUD has determined that it would be in the Secretary's best interest to accept a junior lien position.

D. Preparation Of Closing Documents. Upon approval of Form HUD-93100-4 on Section 235 cases subject to the recapture provision, the HUD Field Office will add the following paragraph as a condition to its firm commitment:

"Second mortgage with addendum, and note in the format prescribed by HUD to be executed and recorded for the maximum amount of assistance as established by Formula II which could be paid over the term of the mortgage. \$\_\_\_\_\_ (Amount to be entered on second note and mortgage (or deed of trust))."

1. Security Instruments. Upon issuance of a firm commitment, the HUD Field Office having jurisdiction over the mortgage will instruct the mortgagee to modify the HUD-approved mortgage or deed of trust document for insured mortgages in that particular State to include the information for the Section 235 recapture mortgage or deed of trust, as follows:

- a. under the document caption, insert the words "with Addendum, for Repayment of Section 235 Assistance";
- b. enter the words "the Secretary of Housing and Urban Development" as the mortgagee and delete any reference to a corporation;
- c. delete any reference to monthly installments;
- d. enter a statement that the principal sum of the mortgage will not exceed the amount computed under the note. The following language is acceptable:

"... but not to exceed an amount computed under the terms of a note executed by the mortgagor on \_\_\_\_\_; with interest, if any, according to the terms of the note.";

- e. delete the two paragraphs relating to the payment of escrow items; and
- f. an addendum should also be added to provide for the special repayment provisions required by Section 235.

NOTE: The Note must be reproduced locally. HUD Field Office Counsel shall review model security instruments to be used to determine that they comply with local law and meet HUD requirements.

2. Information to be Inserted. The mortgagee completes these documents by inserting the following information:

- a. appropriate dates;
- b. names;
- c. property description;
- d. interest rate (which will be the same as the rate on the first mortgage); and

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- e. the maximum amount of assistance that may be paid over the full term of the mortgage.

NOTE: The maximum amount will be the "Formula II" assistance payment shown on the Application for Assistance, Form HUD-93100-4, Line G-7.

E. Title Insurance. The title insurance does not need to recognize the junior recapture lien.

F. Hazard Insurance. The Secretary does not need to be named as a payee in the hazard insurance policy.

**11-5 REQUIREMENTS AT CLOSING.** The originating mortgagee is responsible for the following at the time of closing:

A. Execution Of Lien Documents (24 CFR 235.12(d)). The documents creating the lien in favor of the Secretary shall be executed at the same time as those creating the first lien.

B. Identifying Costs. Costs associated with the transaction may be paid by either the buyer or the seller, subject to the usual underwriting restrictions on such costs. Costs associated with both mortgages may be shown on the same HUD-1, Settlement Statement, as long as the HUD-1 clearly reflects what the costs were for and which costs were paid by the seller and which were paid by the purchaser.

**11-6 RECORDING THE LIENS.** The documents creating the second lien should be delivered for recording at the same time as those creating the first lien. It is the mortgagee's responsibility to assure that the liens are recorded in the proper order.

NOTE: Should the recapture lien be inadvertently recorded in first-lien position, HUD will agree to subordinate its lien to correct this error as the mortgagee's lien will not be insurable if it is not in first-lien position.

**11-7 INSURANCE ENDORSEMENT.** The mortgagee's lien is submitted for mortgage insurance endorsement in the normal manner, accompanied by the following documents: the executed, original "Notice to Buyer"; a copy of the Note in favor of the Secretary; and copies of the executed security instruments with evidence that the originals have been delivered for recording (unless the original, recorded documents have been returned before the case is submitted for insurance endorsement).

NOTE: The application for FHA insurance will not be processed unless it is accompanied by the Notice to Buyer.

A. Where it is not customary for recorders to provide receipts for documents accepted for recording, the mortgagee's certification will be accepted as adequate evidence that the original documents have been delivered for recording.

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- B. When the original documents have been recorded and returned, they are to be forwarded immediately to the appropriate HUD Field Office with the original note in favor of the Secretary. They will be retained by that HUD Field Office until the lien is satisfied.

**11-8 GENERAL SERVICING.** Servicing of the mortgage is governed by the procedures outlined in Chapter 10 until one of the events described in Paragraph 11-9 occurs which will “trigger” the recapture provision.

NOTE: Should the mortgagee find at any time that a case is not under the Recapture Program, but that a second mortgage (or deed of trust) with addendum and a note was executed by the mortgagor and recorded by the mortgagee, the mortgagee must contact the HUD Field Office, single Family Loan Management Branch. The insurance binder must be reviewed by HUD and a justification prepared for satisfying the HUD lien without calculating a recapture amount.

**11-9 EVENTS TRIGGERING RECAPTURE PROVISION (24 CFR 235.12(a)).** The recapture provision is “triggered” when any one of the following events occurs:

- A. a property is sold to a party not eligible for assistance;
- B. the mortgage is assumed by a party eligible for assistance but does not agree to accept assistance and/or assume liability for repayment of assistance paid on behalf of the seller (and previous mortgagors);
- C. a property is rented (or, in the case of properties with more than one unit, the owner’s unit is rented) for more than one year; or
- D. the mortgagor (or the mortgagor’s agent) requests that the Secretary’s lien be released.

**11-10 FORMULA FOR CALCULATING RECAPTURE (24 CFR 235.12(b) and (c)).** When the recapture provision is “triggered”, the amount of recapture shall be determined by HUD to be THE LESSER OF:

- A. the total amount of assistance paid on behalf of the mortgagor (and any previous mortgagors); or
- B. 50 percent of the net appreciation (as determined by HUD) of a property.

NOTE: Net appreciation is any increase in the value of a property over the original purchase price, minus reasonable costs of sale, costs of refinancing the first mortgage or cost of the appraisal when paying off the HUD lien, and minus the reasonable costs of improvements made to a property.

**11-11 MORTGAGEE’S ROLE IN RECAPTURE PROCESS.** Whenever one of the events described in Paragraph 11-9 occurs, the mortgagee is charged with the responsibility for the following:

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1 A. Advising both the HUD Field Office having jurisdiction over the mortgage and the HUD  
2 Headquarters Office of Finance and Accounting, Subsidy Accounting Branch that an  
3 event has occurred which “triggers” the recapture provision. This notification shall  
4 include as much information as the mortgagee has available (i.e., FHA case number, the  
5 date of a prepayment associated with a sale; the name and address of the assumptor, if the  
6 assumptor is not living at the property address; the date the mortgage was assumed and  
7 the fact that the assumptor elected not to receive or did not qualify for assistance, etc.).

8 B. Providing both the local HUD Field Office and the HUD Headquarters Office of Finance  
9 and Accounting, Subsidy Accounting Branch, a statement in writing, signed by an officer  
10 of the company, of the total amount of assistance paid on behalf of the original mortgagor  
11 and all assumptors, if any, less handling charges and the total of any assistance payments  
12 which may have been inadvertently applied to the mortgagor’s account.

13 C. Providing copies of original documents (i.e., signed settlement statements, sales  
14 contracts, etc., which are contained in the mortgagee’s case file) that the mortgagor  
15 cannot provide, but are needed by HUD to determine the amount of recapture due to  
16 satisfy the HUD lien.

17 D. Serving as the “go-between” where necessary and advising the mortgagor of the  
18 documentation required to calculate the recapture amount due HUD.

19 NOTE: THE MORTGAGEE MUST NOT CALCULATE THE RECAPTURE  
20 AMOUNT.

21 NOTE: If the mortgagee receives the recapture amount due either directly from the  
22 mortgagor or as a disbursement from closing, the mortgagee shall promptly forward these  
23 funds directly to the local HUD Office.

24 THE MORTGAGEE MUST NOT ASSUME ANY DUTIES CONCERNING THE  
25 CALCULATION OF THE RECAPTURE AMOUNT.

26 E. Verifying and certifying that all appropriate recertifications (from the time of inception  
27 through the time of termination of the assistance payments contract) have been correctly  
28 processed and billed.

29 At the request of a Field Office, the mortgagee shall submit recertifications for review by  
30 that Field Office before the recapture process begins.

31 F. Repaying any overpaid assistance (that may have been discovered as a result of  
32 Paragraph 11-11E) as described in Chapter 10.

33 NOTE: Any amounts of overpaid assistance paid to HUD because of this requirement are  
34 to be so indicated and subtracted from the amount reported in compliance with Paragraph  
35 11-11B.

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Any overpaid assistance should be handled as a separate transaction from the recapture amount when processing a recapture case for satisfaction of HUD's lien.

NOTE: If a check for an overpaid assistance amount is received or if the overpaid assistance is included in the same check as the recapture amount, the check must be forwarded to HUD Headquarters, Office of Finance and Accounting and a copy should be sent to the HUD Field Office having jurisdiction over the mortgage immediately along with the back-up documentation for the overpaid assistance amount.

G. Terminating the assistance payment contract in accordance with Chapter 10, Paragraph 10-19.

NOTE: If the mortgagor is refinancing the first mortgage, the mortgagee is charged with the responsibility for items B, D, E, F, and G.

**11-12 HUD'S ROLE IN THE RECAPTURE PROCESS.** When the local HUD Field Office is advised by a mortgagee, an attorney, a title company or other settlement party, of a pending or accomplished event which triggers recapture (as listed in Paragraph 11-9), the HUD Field Office may request the following items in order to compute the recapture amount due to satisfy the HUD lien:

A. a copy of the recorded second mortgage (or deed of trust) with addendum and executed note (should the HUD Field Office not have the original documents in its files);

B. a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) where the original mortgagor purchased the property;

C. a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) of any assumptor who purchased the property prior to the last mortgagor;

D. a copy of the executed sales contract and HUD-1 settlement statement (signed by the settlement attorney) when the last mortgagor (i.e., the last one receiving assistance) sold the property;

E. copies of paid receipts and/or bills marked "paid in full" for any improvements made to a property (by the original mortgagor and/or any assumptor);

F. a letter from the mortgagee, signed by an officer of the company, stating the total amount of assistance paid on behalf of the original mortgagor and all assumptors (if any).

G. an appraisal report on the property and a statement of the cost of the appraisal, if needed; and

H. a statement of the costs of refinancing the first mortgage, when needed.



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**11-13 DETERMINING THE RECAPTURE AMOUNT.** To determine the recapture amount for a Section 235 recapture case, the documentation requested in Paragraph 11-12 must be reviewed. A formula is used to calculate the recapture amount. The cost of sale (or the cost of refinancing the first mortgage) and the cost of improvements to a property are subtracted from the appreciation of the property to arrive at net appreciation. See Paragraph 11-10.

**11-14 REASONABLE COSTS OF SALE.** Since the title of the property changes when the property is sold, the costs of sale must clearly indicate which costs were paid by the seller and which were paid by the purchaser and are subject to the usual underwriting restrictions on such costs. Costs of sale shall also conform to what is considered by the local HUD Field Office to be reasonable and customary for that area of the country. Otherwise, the excess will be disallowed. Costs of sale must be clearly identified on a HUD-1, Settlement Statement, signed by the appropriate person. If there is no HUD-1, the costs of sale must be itemized and supported by receipts.

A. Costs Allowed. Costs of sale items which HUD will allow to be claimed against the net appreciation of a property if the costs are paid by the original mortgagor and/or subsequent assumptors of the mortgage are:

1. broker's commission;
2. discount points (not origination fee);
3. property survey;
4. appraisal fee;
5. State and local taxes (charged in connection with the transaction, such as transfer taxes (not property taxes or amounts escrowed for the future payment of taxes);
6. attorney fees;
7. fees for the preparation and recording of documents;
8. notary fees;
9. costs of advertising the property for sale (but not if these costs are paid by the broker and included in the commission);
10. title search, but not if included in attorney's fee;
11. title insurance;
12. pest control inspection;
13. pumping out septic tank as a condition of sale (where required by State law);
14. buyer's protection plans providing the buyer with a warranty as to the condition of the property and covering repair or replacement of certain elements of the property for a limited time; and/or
15. any other costs resulting from a State and/or local requirement.

B. Costs Not Allowed.

1. buydown fee (If there are no discount points allowed (see A.2. above), the buydown fee can be claimed against the appreciation of the property);
2. tax funding service fee; and
3. VA funding fee.

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**11-15 REASONABLE COST OF REFINANCING THE FIRST MORTGAGE.** Since the title to a property does not change when the first mortgage is refinanced, the costs of refinancing do not include all of the costs allowed for costs of sale when a property is sold. Refinancing costs must be clearly identified on a HUD-1, Settlement Statement, signed by the appropriate person. If there isn't a HUD-1, the cost of refinancing should be itemized and supported by receipts.

A. Costs Allowed. If there are any prior assumptors of a mortgage that is being refinanced, the costs of assuming the mortgage (for each transaction) can be claimed against the appreciation of a property if the charges are documented. Costs of refinancing the first mortgage which HUD will allow to be claimed against the appreciation of a property (if the costs are paid by the last eligible mortgagor) are:

1. appraisal fee;
2. one discount point (not origination fee);
3. property survey;
4. pest control inspection;
5. title search;
6. lender's title insurance; and
7. fees for the preparation and recording of documents.

B. Costs Not Allowed.

1. Buydown fee (if there are no discount points, one point of the buydown fee can be claimed against the appreciation of the property);
2. tax funding service fee;
3. VA funding fee; and
4. mortgagor's title insurance (title of property).

#### **11-16 REASONABLE COSTS OF IMPROVEMENTS.**

A. To qualify As An Improvement. Improvements must be over and above deferred or routine maintenance to be allowed as claims against the appreciation of a property. They must be:

1. acceptable to HUD;
2. improvements that were not present or a part of a property at the time the mortgage was originated, unless it is an upgrade (see Paragraph 11-16B9 below);
3. considered to be permanent improvements in that they will remain with a property when it is sold as they cannot be removed from the property without causing damage to existing structures and/or the property; and
4. improvements for which the mortgagor can substantiate the cost with documented proof that such improvements were done to the mortgaged property site and for which the mortgagor has receipts marked "paid-in-full" as required in Paragraph 11-12E.

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1 B. Allowable Improvements. Acceptable types of improvements which HUD will allow to  
2 be claimed against the appreciation of a property when computing the recapture amount  
3 include, but are not necessarily limited to, the following:

- 4 1. room additions and other permanent additions, such as, but not necessarily limited to,  
5 porches, patios, decks, garages and carports;
- 6 2. permanent landscaping and/or other site improvements that tend to increase the value  
7 of a property, such as fences, trees, shrubbery, lawns (if no lawn was provided  
8 initially) retaining walls, etc.;
- 9 3. built-in bookshelves, cabinets, etc.,
- 10 4. appliance additions (stoves, refrigerators, built-in dishwashers, built-in microwave  
11 ovens, clothes washers and dryers, and attic and ceiling fans) which are conveyed to  
12 buyer by seller;

13 NOTE: If items in #4 above are replacement items, they are not allowed against the  
14 appreciation of a property.

15 If the mortgagor bought original appliances after purchase of a new property, original  
16 costs of appliances can be claimed against the appreciation of a property. (In some  
17 sections of the country, appliances are not furnished by the builder, unless requested  
18 by the mortgagor.)

19 Portable appliances are not allowed against the appreciation of a property.

20 The Field Office Evaluation staff shall be notified on a case-by-case basis to  
21 determine whether washers and dryers or other such permanent fixtures that are  
22 considered to be regional appreciation value assets can be claimed against the  
23 appreciation of a property.

- 24 5. finishing or refinishing of basements or other rooms when the area was unfinished at  
25 the time of origination or the refinishing substantially alters the nature of the area and  
26 enhances the value of a property;
- 27 6. the addition of storm windows and/or doors or replacing regular windows with  
28 replacement windows (for the purpose of saving energy);
- 29 7. installation of permanent heating or cooling systems where none existed, the addition  
30 of a solar heating system or replacing a conventional heating system with a solar  
31 heating system;
- 32 8. carpeting areas where floors were previously without finished coverings (such as, a  
33 room addition, or a basement area);
- 34 9. upgrading: appliances, cabinets, carpeting, electrical and plumbing fixtures, etc.

35 NOTE: If the mortgagor upgraded an item that the builder was to install at the time  
36 the structure was erected, the cost of the improvement is the difference in price for  
37 upgrading. If such items are replaced, the replacements cannot be claimed against the  
38 appreciation of a property.

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10. television dish. (If the dish is listed in the sales contract and/or appraisal report and cannot be removed from the property without damaging the landscape, it can be claimed against the appreciation of the property.)
11. sheds and outbuildings. (If structures enhance a property and cannot be removed without damaging the landscape, they can be claimed against the appreciation of a property.)
12. building permits and inspection fees for property additions;
13. swimming pools are allowed as improvements on a case-by-case basis if:
  - a. the swimming pool is below ground and enhances the value of a property (per appraisal) and/or is taxed by the municipality, its cost can be claimed against the appreciation of a property;
  - b. the swimming pool is above ground, it may or may not be allowed against the appreciation of a property depending on the area of the country it is located. If the pool is not taxed by the municipality or is not given a value in the appraisal of the property, its cost cannot be claimed against the appreciation of a property;
  - c. a swimming pool or other such fixture, i.e., outdoor hot tub, is affixed to a property and cannot be moved without damaging the fixture or the landscape, is taxed by the local municipality and/or enhances the value of the property (per appraisal), its cost can be claimed against the appreciation of a property;
14. special assessments, such as water and sewer lines connecting a property to the water and sewer lines of a municipality, the paving of streets, sidewalks and alleys, wiring for electricity and telephones and piping for gas must be handled on a case-by-case basis; and
15. land issues (those considered to be improvements must be handled on a case-by-case basis).

NOTE: The HUD Field Office must be contacted for guidance in handling special assessments and land issues as improvements and their costs as claims against the appreciation of a property.

- C. Miscellaneous Improvements Of Less Than \$100 Per Project. Miscellaneous improvements which are less than \$100 per project are to be considered incidentals and are not to be allowed as a claim against the appreciation of a property. Included in this category are such items as molding, weatherstripping, sod, grass seed, fertilizer, etc.
- D. Group Improvements As Projects. When a major improvement which involve the purchase/rental of numerous items of equipment and/or materials is claimed, it must be grouped together as one project. However, each item purchased for that project must reflect its own separate cost.
- E. "Sweat Equity". Where the work is performed by the mortgagor (i.e., "sweat equity"), no monetary value will be given for the "sweat equity" with respect to being used as a claim against the appreciation of a property. However, the cost of building permits, inspections,

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renting items of equipment and purchasing the supplies and materials necessary to accomplish the work can be allowed.

F. Rental Equipment. Costs of renting equipment for the specific use in completing an acceptable improvement (as described in Paragraph 11-16B) may be used as claims against the appreciation of a property.

1. Rental equipment which may qualify as claims against the appreciation of a property includes, but is not necessarily limited to, backhoes, bulldozers, cement mixers, jackhammers, electric or air-driven nail/brad/staple guns, posthole augers, fence wire stretchers, etc., which were rented for the sole use in completing a specific home improvement listed in Paragraph 11-16B.

2. Equipment which does not qualify as a claim against the appreciation of the property includes miscellaneous tools and equipment purchased for use in completing an improvement as described in Paragraph 11-16D and will also be used for performing other tasks and/or home improvements. Such items may include, but are not necessarily limited to, shovels, picks, ladders, carpenter levels, saws, drills, hammers, utility knives, screwdrivers, wire cutters, wrenches, caulking guns, cement trowels, etc.

G. Where The Cost Of An Improvement Is Paid Using A Monthly Installment Payment Plan. Where an improvement is paid for on a monthly installment plan (whether paid to the company providing the service, a bank, a credit card company, etc.) only the initial cost of the improvement (excluding any interest, finance charges or late charges) may be used as a claim against the appreciation of a property.

H. Receipts/Documentation Of Improvements. In order to support the cost of an improvement, the mortgagor must present receipts or invoices on company letterhead marked "paid-in-full" for each allowable home improvement. Receipts which are written on paper without a business letterhead, or without specific (or legible) entries as to what service was provided, who provided the service, the date the service was provided, and/or what type of material was purchased, and where appropriate, at what property address the service was performed, etc., may be subject to further scrutiny and/or rejection by the HUD Field Office.

I. Replacements. Items such as roof replacements, heating system replacements (except solar heating systems), and exterior and interior painting are home maintenance. They must not be claimed against the appreciation of a property as improvements.

J. Items Not Allowed As Improvements.

1. Draperies, curtain rods, window shades and blinds are never allowed as improvements unless they are approved by Headquarters.

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2. Plumbing fixtures (such as faucets and water purifiers) and light fixtures cannot be claimed against the appreciation of a property unless they are installed as part of a major improvement or they are approved by Headquarters.

3. Intercommunications systems must not be claimed against the appreciation of a property.

**11-17 FRAUD AND ABUSE.** Careful scrutiny is to be given where substantial improvements have been made over a short period of time, shortly after purchase of a property, and/or over an extended period, which exceed \$10,000 while assistance was still being paid.

NOTE: Occurrences such as these, will lead to the HUD Field Office questioning the mortgagor's need for assistance and/or the possibility of fraud in the original application process.

#### **11-18 CALCULATING THE RECAPTURE AMOUNT.**

A. Calculating The Recapture Amount. The HUD Field Office shall calculate the amount of recapture due in order to satisfy the lien using the formula shown in Paragraph 11-10 and on the Recapture of Assistance Payments Worksheet. Only the HUD Field Office shall calculate the amount of assistance to be recaptured.

B. Selling Price. If the HUD Field Office feels that the reported selling price is substantially below the property value or discovers that the property is being sold for less than the amount for which it was purchased, the HUD Field Office has the option of requesting that the mortgagee obtain an appraisal of the property.

NOTE: If the appraised value is five (5) percent or more above the sales contract price, the recapture will be based on the appraised value rather than the selling price shown on the sales contract.

**11-19 DISPOSITION OF THE RECAPTURE CHECK.** The HUD Field Office has the responsibility of collecting the recapture amount from the mortgagor or the mortgagor's representative. Should the recapture amount be collected by the mortgagee, the check must be forwarded to the appropriate HUD Field Office and the Office shall forward it to a lockbox in Atlanta, Georgia.

**11-20 RELEASING THE RECAPTURE LIEN.** Upon receiving the full recapture amount required to satisfy the second mortgage, or second deed of trust, the HUD Field Office will prepare, execute, record and forward the recorded Satisfaction of Lien to the mortgagee or the agent representing the mortgagor. The mortgagee or mortgagor's agent will then be responsible for forwarding the document to the mortgagor.

**11-21 SATISFYING THE LIEN BEFORE OBTAINING RECAPTURE AMOUNT.** If the settlement on a property is imminent, the second mortgage or second deed of trust has not been satisfied, and there is a request to satisfy the lien before closing, the mortgagor must be informed that since there is not enough time to do the recapture formula to determine the recapture

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amount, the full amount of assistance paid on the mortgagor's behalf must be submitted to HUD so that the HUD lien can be satisfied before settlement of the mortgage. When the recapture calculation has been completed, if there is an overpayment, the overpayment shall be refunded to the mortgagor.

**11-22 ASSIGNMENT TO HUD.** In those cases where the HUD Field Office has decided to accept an assignment of the first mortgage, the recapture lien shall remain in place. The mortgagee must advise both the HUD Field Office and the HUD Headquarters Office of Finance and Accounting, GPA - Subsidized Housing Programs Division, Attention: Accounts Payable Section (the mailing address on Form HUD-93102) in writing, signed by an officer of the company, of the total amount of assistance paid through the date of assignment.

**11-23 FORECLOSURES - HUD-ACQUIRED PROPERTIES.** For those properties conveyed to HUD as a result of foreclosure, the mortgagee must advise the HUD Field Office, in writing, signed by an officer of the company, of the total amount of assistance paid over the term of the mortgage. It will not be necessary for HUD to prepare a satisfaction of lien for the HUD lien. A foreclosure that is properly processed by the mortgagee's foreclosing attorney will wipe out all existing liens on the property, including HUD's lien. However, if the HUD lien exists after foreclosure of the first mortgage, the HUD Field Office must satisfy the lien at the request of the foreclosing attorney.

**11-24 DEED-IN-LIEU OF FORECLOSURE.** For the mortgage that is conveyed to HUD as a result of a deed-in-lieu of foreclosure, the recapture lien shall remain in place. The mortgagee must advise the HUD Field Office, in writing, signed by an officer of the company, of the total amount of assistance paid over the term of the mortgage.

NOTE: Once the property is in HUD's Property Disposition inventory, the HUD Field Office will prepare and record a satisfaction of the recapture lien in order to provide a clear title when the property is sold by HUD.

#### **11-25 RELOCATION OF MORTGAGOR BY EMPLOYER.**

A. Termination Of Assistance. If an employer requires a Section 235 mortgagor to relocate, and the employer assumes the responsibility of selling the mortgagor's property, the mortgagee must terminate the assistance at the appropriate time. (Chapter 10, Paragraph 10-19.) The mortgagee must furnish the HUD Field Office with a statement of the total amount of assistance paid on behalf of the original mortgagor and any assumptors of the mortgage.

B. Value Of Property. The mortgagee must provide the HUD Field Office with an appraisal to determine the fair market value of a property or the HUD Field Office must request an appraisal of the property.

#### **11-26 DISLOCATION OF MORTGAGOR (EMINENT DOMAIN).**

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A. Relocate To Another Property. If a State or local government dislocates a Section 235 mortgagor because it needs the property for public use, the mortgagor may relocate to another property under the same mortgage. The FHA case number must remain the same for the purpose of paying assistance on the mortgagor's behalf.

1. The State or local government must NOT pay the first mortgage in full.
2. The mortgagee must agree to transfer the first and second mortgages or first and second deeds of trust to a new property.
3. The mortgagee must amend the first and second mortgages or deeds of trust security instruments to read the legal description of the new property.
4. The new property must be equal in value to the old property.
5. The mortgagee must transfer the Section 235 assistance with the first mortgage or deed of trust to the new property.
6. The amended mortgages or deeds of trust must be executed, dated, and recorded to reflect the transfer of these documents to the new property.
7. The mortgagee must send the recorded, amended second mortgage or deed of trust to the HUD Field Office where it will be filed with the original security instruments.

B. Unable To Transfer Mortgages. If the mortgagor is unable to get the first and second mortgages or first and second deeds of trust on a property transferred to another property of equal value, the State or local government must purchase the property from the mortgagor. The mortgagee must contact the HUD Field Office of the pending sale of the property. The HUD Field Office must take the appropriate steps to satisfy the HUD lien on the property.

**11-27 SUBORDINATION OF THE HUD LIEN.** If subordination of the HUD lien on a property is in the best interest of the Secretary, the HUD Field Office may approve subordination of a recapture lien in the case of refinancing a first mortgage or securing a Title I loan for improving the property. The mortgagee must contact the HUD Field Office for details on subordinating the HUD lien.

**11-28 SUMMARY.** The appropriate HUD Field Office should be notified if any one of the following events occurs:

- A. The first mortgage on a property has been paid in full through sale of the property.
- B. The first mortgage has been assumed by a mortgagor not eligible for assistance or the new mortgagor does not want to participate in the Section 235 Assistance Program.
- C. The first mortgage has been refinanced.



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D. The first mortgage has been assigned to HUD.

E. The property has been rented for more than a year. (If more than one unit, the owner's unit is rented.)

F. The assistance has been terminated after a 36-month suspension.

G. The mortgagor has been relocated or dislocated from a property under circumstances beyond his/her control.

H. The mortgagor has requested that the HUD lien be subordinated to a lessor position when the first mortgage is refinanced

Explanations of A through H above.

In A., above, the mortgagor must be notified that the Recapture Provision becomes effective.

In B., above, the mortgagor must be notified that the Recapture Provision becomes effective.

In C. above, the mortgagee refinancing the first mortgage should notify the HUD Field Office if it (the mortgagee) wants the HUD lien satisfied due to the fact that the HUD lien moves into first-lien position when the original first mortgage is paid-in-full.

In D. above, if the first mortgage is assigned to HUD, the mortgagee must submit a statement of the full amount of assistance paid by HUD on behalf of the original mortgagor and all assumptors of the mortgage to the HUD Field Office. In E. above, the HUD Field Office must calculate the recapture amount and maintain a file on the case. In F. above, the HUD Field Office must request a decision from the mortgagor as to whether he/she wants the HUD lien satisfied after termination of the assistance.

In G., above, there are specific procedures to follow for processing the relocation case. For the dislocation case, there are special conditions that must be considered to retain the original first mortgage and Section 235 assistance by transferring both to another property of equal value. In H., above, there are special conditions under which a Section 235 Recapture mortgage can be subordinated.

#### iii. Maintenance of Escrow Accounts - Analysis

Formerly HUD Handbook 4330.1, REV -5, Section 2-7E

#### 2-7 MAINTENANCE OF ESCROW ACCOUNTS - ANALYSIS (24 CFR 203.550(b)).

E. Mortgages Insured Under Section 235. [HUD's escrow requirements apply] equally to mortgages insured under Section 235. With these mortgages, the logical time for escrow analysis is on or just after the anniversary date of the first payment due under the mortgage since it is then that the MIP changes and annual recertification is required. Both

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of these events may affect the amount of assistance to which the mortgagor is entitled and delays in analysis could result in a need for significant retroactive adjustments.

Both Formulas I and II must be recomputed as of the anniversary date regardless of changes in escrow requirements. Mortgagees may, however, elect to analyze Section 235 escrow accounts at any time, provided assistance is recomputed at the time of annual recertification to reflect any changes in the mortgagor's income or family composition, as well as the annual change in MIP. (See Chapter 10 for detailed instructions. )

#### iv. Statement For Income Tax Purposes

Formerly HUD Handbook 4330.1, REV-5, Section 2-10B

#### 2-10 PROVIDING LOAN INFORMATION (24 CFR 203.508).

- B. Statement For Income Tax Purposes (24 CFR 203.508(c)). By January 30 of each year, the mortgagee must furnish the mortgagor with a statement of taxes and interest paid during the preceding calendar year (24 CFR 203.508(c)). HUD takes no position on the income tax impact of these amounts.

If the mortgage is insured under Section 235, the statement must also include an accounting of the total amount of assistance paid by HUD and applied to the account during the preceding year (24 CFR 235. 1001). This Section 235 Statement may be a part of the escrow accounting or may be in a separate statement accompanying the Income Tax Statement (See Paragraph 10-35B). The mortgagee may either:

1. report the excess of interest payments over assistance payments during the year,  
or
2. report both the total interest and assistance payments during the year.

NOTE: This Income Tax Statement must include or be accompanied by a statement which includes substantially the following language:

“If you itemize deductions on your income tax returns, please read this notice. Under Section 1. 163-1(d) of Federal Income Tax Regulations, you, as the mortgagor, may deduct for Federal income tax purposes only that part, if any, of mortgage interest payments made during the year that exceeded the amount of assistance payments made by HUD during the year. You are urged to contact your tax advisor or State and local tax offices for guidance regarding the deductibility of payments on your State or local income tax returns.”

#### v. Late Charges

Formerly HUD Handbook 4330.1, REV-5, Section 4-2D

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#### 4-2 LATE CHARGES (24 CFR 203.25).

##### D. Computing Late Charges.

NOTE: When the mortgage is insured under Section 235, OR the mortgage is subject to a buy-down, only the mortgagor's portion of the monthly payment is used when computing a late charge.

##### vi. Assumptions

Formerly HUD Handbook 4330.1, REV-5, Section 4-4

#### 4-4 ASSUMPTIONS.

A. Maximum Allowable Fees. Fees for processing assumptions must be based on the mortgagee's actual costs and cannot exceed the maximum amount authorized in this Handbook. (See Chapter 6 for requirements concerning assumptions. ) The maximum amounts allowed by HUD for processing various types of assumption are as follows:

##### 1. Section 235 Assumptions.

- a. Assumption Without A Release of Liability and Where Assistance Is Requested But Disapproved. Where no credit checks are required and the mortgagor applies for assistance but is not considered eligible for Section 235 subsidy the maximum fee that may be charged is \$140.00.
- b. Assumption Without A Release of Liability and Where Assistance Is Requested and Approved. Where a credit check is not required and the Section 235 subsidy will be terminated, the maximum fee that may be charged is \$185.00.
- c. Assumption With A Release of Liability and Where Assistance Is Not Requested or Approved. Where a credit check is required and the Section 235 subsidy will be terminated, the maximum fee that may be charged is \$500.00.
- d. Assumption With A Release of Liability and Assistance Is To Continue. Where a credit check is required and the Section 235 subsidy will continue on behalf of the assumptor, the maximum fee that may be charged is \$500.00.

##### vii. Escrow Balance Returned to Mortgagor

Formerly HUD Handbook 4330.1, REV-5, Section 5-2

#### 5-2 PREPAYMENT IN FULL (24 CFR 203.558).

G. Escrow Balance Returned to Mortgagor. When the mortgage insurance is terminated without payment of a claim for insurance benefits (i.e., payment in full) the remaining

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funds held in escrow for the payment of taxes and hazard insurance shall be \* released to the mortgagor promptly (i.e., no later than 30 calendar days after the payoff). \*

EXCEPTION: An analysis must be performed in accordance with Paragraph 10-20D3 on all Section 235 prepayments in full prior to refunding any escrow money to the mortgagors.

H. Section 235 Mortgages. In addition to the other requirements cited under Paragraph 5-2, for all Section 235 mortgages that are prepaid in full, the following requirements apply:

1. mortgagees must perform an analysis in accordance with Paragraph 10-20D3 prior to refunding any escrow money to the mortgagor as stated in the “Exception” cited in the preceding paragraph; and
2. mortgagees must determine in accordance with the instructions outlined in Chapter 11 if the mortgage is insured pursuant to a firm commitment issued after May 27, 1981 as to whether:
  - a. the prepayment has triggered the recapture provision in connection with HUD's Section 235 mortgage on the property; and
  - b. the appropriate action has been taken as required by Chapter 11.

#### viii. Partial Payments

Formerly HUD Handbook 4330.1, REV-5, Section 7-9

**7-9 PARTIAL PAYMENTS (24 CFR 203.556).** ...When the mortgage is insured under Section 235, the “full amount due under the mortgage” is considered to be the full amount due from the mortgagor only.

#### ix. SCRA Interest Rate Cap

Formerly Mortgagee Letter 2006-28 Mortgage and Foreclosure Rights of Servicemembers under the Servicemembers Civil Relief Act (SCRA)

A few Section 235 mortgages still have assistance payments from HUD applied to them on behalf of lower-income mortgagors. Assistance for these mortgages may be affected by the six percent interest rate limitation. On all accounts receiving assistance when the note rate of interest exceeds six percent, the amount of assistance must be reanalyzed, and the subsidy amount must be recalculated using the full mortgage payment at a six percent rate when determining the amount of assistance. For some accounts, the interest rate deduction will cause the suspension of assistance for the period of active duty. Whenever an interest rate reduction is made with retroactive effect and the Section 235 assistance is reduced, any over-billed subsidy must be returned to HUD as a refund or adjustment to the subsequent Section 235 monthly billing. When active duty terminates and the note rate resumes, the assistance must be recalculated and restored in accordance with the usual procedures. Any income recertification requests received from

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- 1 mortgagors in accordance with 24 CFR § 235.355 must be processed expeditiously. Please also  
2 reference ML 91-20, *Effect of the Soldiers' and Sailors' Civil Relief Act of 1940 on FHA Insured*  
3 *Mortgages* for additional guidance in calculating Formula 2 subsidy.

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## APPENDIX 4.0 – FHA-HOME AFFORDABLE MODIFICATION PROGRAM (FHA-HAMP) CALCULATIONS (APPLIES TO SERVICING ONLY)

The Mortgagee must evaluate Borrowers in the order of each step below. Borrowers must meet all eligibility requirements associated with the [FHA-HAMP Option](#) in accordance with HUD guidance.

### Step 1: Review for [FHA-HAMP Standalone Loan Modification](#)

1. Calculate the target Mortgage Payment:
  - A. Calculate 31% of gross income;
  - B. Calculate 80% of current Mortgage Payment;
  - C. Calculate 25% of gross income;
  - D. Take the greater of B or C; and
  - E. The lesser of A or D determines the target Mortgage Payment.
2. Amortize the total outstanding debt (to be resolved at the [Market Rate](#) for a 360-month term to determine the modified Mortgage Payment required to bring the loan current.
  - a. The Mortgagee may capitalize in an FHA-HAMP Standalone Loan Modification an amount needed to cover:
    1. arrearages, which include Mortgagee advances for escrow items;
    2. projected escrow shortage amount; and
    3. related legal fees and foreclosure and bankruptcy costs for work actually performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as reasonable and customary.

If the result of the modified Mortgage Payment (Step 1.2) is at or below the target Mortgage Payment (Step 1.1.E), the Borrower is eligible for an FHA-HAMP Standalone Loan Modification; if not, go to Step 2.

### Step 2: Review for [FHA-HAMP Standalone Partial Claim](#)

#### Step 2.1: Establish the Maximum Partial Claim Amount Available

The maximum Partial Claim amount available is the lesser of:

1. the unpaid principal balance on the Date of Default from the first Partial Claim filed for reimbursement, multiplied by 30%, less any previous Partial Claim(s) amount paid on this Mortgage; or
2. if no previous Partial Claim(s) were filed during the life of the loan, the unpaid principal balance as of the Date of Default for the current Default episode multiplied by 30%.

If the Borrower has exhausted the maximum Partial Claim amount available, go to Step 3. If not, continue to Step 2.2.

**Step 2.2: Determine if the Borrower's current Mortgage Payment meets the following criteria**

1. the Borrower's current interest rate is at or below Market Rate; and
2. the Borrower's current Mortgage Payment with re-analyzed escrow will be at or below the target Mortgage Payment (Step 1.1.E).

If the Borrower's current Mortgage Payment does not meet the above criteria, go to Step 3. If the Borrower meets the above criteria, continue to Step 2.3.

**Step 2.3: Calculate the Standalone Partial Claim Amount Needed to Bring the Loan Current**

The Mortgagee may utilize an FHA-HAMP Standalone Partial Claim in an amount needed to cover:

- arrearages, which include Mortgagee advances for escrow items;
- projected escrow shortage amount;
- related legal fees and foreclosure and bankruptcy costs for work performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as reasonable and customary.

If the Borrower can resolve the debt without exceeding the maximum Partial Claim amount, the current interest rate is at or below the Market Rate and the current Mortgage Payment with re-analyzed escrow does not exceed the target Mortgage Payment (Step 1.1.E), the Borrower is eligible for an FHA-HAMP Standalone Partial Claim; If not, go to Step 3.

**Step 3: Review for [FHA-HAMP Combination Loan Modification and Partial Claim](#)**

The Mortgagee may utilize an FHA-HAMP Combination Loan Modification and Partial Claim when establishing an affordable monthly payment that requires a Partial Claim in an amount needed to cover:

- arrearages, which include Mortgagee advances for escrow items
- Projected escrow shortage amount;
- related legal fees and foreclosure and bankruptcy costs for work performed for the current Default episode as of the date of the foreclosure cancellation and not higher than the foreclosure-related fees and costs HUD has identified as reasonable and customary.
- principal deferment

**Calculate the Partial Claim amount required:**

1. Calculate the required loan amount needed to reach the target Mortgage Payment from Step 1.1.E.
2. Subtract the required loan amount from the total outstanding debt to determine the Partial Claim amount required to bring the loan current and any required principal deferment.
  - If the amount of the Partial Claim required does not exceed the maximum Partial Claim amount (Step 2), the Borrower is eligible for a Combination FHA-HAMP Loan Modification at the required loan amount and Partial Claim amount needed to bring the loan current.

- If the amount of the Partial Claim required exceeds the maximum Partial Claim amount (Step 2), calculate the maximum modified loan amount.

**Calculate the maximum modified loan amount:**

1. Subtract the maximum Partial Claim amount (Step 2) from the total outstanding debt to be resolved (Step 1.2) to determine the maximum modified loan amount.
2. Re-amortize the maximum modified loan amount at the Market Rate for a 360-month term to determine the modified Mortgage Payment.
  - If the modified Mortgage Payment is at or less than 40% of the current gross income, the Borrower is eligible for a Combination FHA-HAMP Loan Modification at the maximum modified loan amount and a Partial Claim.
  - If the modified Mortgage Payment is greater than 40% of the current gross income, and one or more Borrower is unemployed, the Mortgagee must review the Borrower for a [Special Forbearance for Unemployment](#).
  - If the Borrower has been determined ineligible for all [Home Retention Options](#), but has surplus income or other assets to repay the indebtedness within six months, the Borrower is eligible for a Formal Forbearance.
  - If the Borrower has been determined ineligible for all Home Retention options the Mortgagee must review the Borrower for [Home Disposition Options](#).