

CHAPTER 5 CHANGES MADE AFTER MORTGAGE INSURANCE

5-1 GENERAL

The lender and borrower may agree to change the mortgage terms (loan modification) or otherwise change the nature of the obligation or the security (property) after the mortgage has been insured. (see HUD Handbook 4330.1, REV-5, Chapter 8 with regard to forbearance agreements). When this occurs and such practice is acceptable under state laws, the existing contract of insurance remains in effect.

Lenders are reminded that when making decisions as to whether a change should be made to an existing mortgage, they are expected to abide by the Fair Housing Act, the Equal Credit Opportunity Act, Executive Order 11063, and the FHA regulations issued pursuant to these authorities.

5-2 CHANGES THAT MUST BE APPROVED BY FHA

The lender must obtain prior FHA approval of certain changes to be made to the mortgage terms or property after insurance. These changes include:

- A. A mortgage modification for more than 10 years beyond the original maturity date (see Chapter 5 of this handbook for processing procedures).
- B. A partial release of security not resulting from condemnation (see Chapter 6 of this handbook for processing procedures).
- C. A partial release of security resulting from condemnation, but the condemnation does not meet the requirements of 24 CFR 203.389(n) (see Chapter 6 of this handbook for processing procedures).
- D. A change of location of the dwelling (removing the dwelling to another lot) in other than emergency circumstances (see Chapter 7 of this handbook for processing procedures).

5-3 POST-INSURANCE REQUEST FOR RECONSIDERATION OF VALUE

A request for an increase in value after the mortgage is insured will not be accepted.

5-4 CHANGE OF THE FIRST PAYMENT DATE AND/OR MATURITY

If, after the loan is insured, a request is received to postpone the first payment date and/or maturity date, it is the policy of FHA to approve, in justified cases, the correction of delinquencies which occurred prior to insurance. This is done by postponing the date of the first payment. However, the FHA does not approve the correction of delinquencies which occurred after insurance.

- E. When occupancy of the property by the borrower is delayed because of delays of construction or other circumstances beyond the borrower's control, and the mortgage has already been recorded, the lender may request FHA approval to change the maturity date of

the mortgage. If a request for FHA approval is received prior to insurance and appears to be reasonable, the appropriate HOC may authorize insurance of the mortgage.

- F. To effectuate the above policy involving a request received after endorsement for a postponement of the first monthly payment due date, the appropriate HOCs are authorized to consent to a postponement of said date not to exceed 30 days after the date of endorsement. The new first monthly payment due date must be entered into CHUMS.

5-5 CORRECTIONS OF ERRORS IN ORIGINAL INSTRUMENTS

Certain types of errors can be corrected in some jurisdictions without destroying the identity of the original note and, therefore, without requiring the submission of new instruments for endorsement. No attempt is made to describe all types of errors that can be corrected in this manner, and lenders must request guidance from the HOC for individual cases. However, the procedure for two common types of errors is described below.

- G. **Incorrect Legal Description.** The lender may submit a new mortgage or deed of trust executed by the interested parties containing a recital to the effect that the instrument has been given for the purpose of correcting the error in the previous instrument of record. If it is necessary to present a new credit instrument for insurance, the transaction must be handled as a new case. The final determination of the method used to correct the errors in such cases should be left to the discretion of the lender who would have the responsibility of being able to complete foreclosure in the event of default, and otherwise comply with the insurance contract. If the change in the legal description involves a release of land intentionally included by the interested parties as part of the original security, the Release of Portion of Security Procedure in Chapter 6 shall be followed.
- H. **Incorrect or Discrepant Signature on Mortgage or Note.** A lender may advise the appropriate HOC by letter that a discrepancy in the signatures on the various instruments exists, but that the parties are the same. Such letters should be marked with the case number and submitted to the appropriate HOC. The appropriate HOC will then notify the lender of any further action that must be taken by the lender.

5-6 OMISSION OF SPECIAL ASSESSMENTS IN APPLICATION FOR INSURANCE

If a request to amend an application to include special assessments (which were liens prior to endorsement for insurance) is received after the mortgage has been insured, the lender should be advised that it would be impossible to grant such a request. The terms of the Regulations under which a mortgage is insured govern the rights of the lender from the date of such insurance.

For previously insured mortgages, some lenders require a waiver letter in connection with customary building and use restrictions. They also include requests for statements that certain special assessments payable in future annual installments have been considered by the FHA in determining the value. In reply to such requests, it is important that these statements are limited to the restrictions and should not include the assessments. HOCs are not authorized to give waivers regarding assessments after the mortgage has been insured.