

SUBPART F - DEFAULT UNDER THE LOAN OBLIGATION

§ 201.50 Lender efforts to cure the default.

- (a) Personal contact with the borrower before acceleration and foreclosure or repossession. The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has serviced the loan in a timely manner and with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan, the lender or its agent shall contact the borrower and any co-maker or co-signer, either in a face-to-face meeting or by telephone, to discuss the reasons for the default and to seek its cure. If the borrower and the co-makers or co-signers cannot be located, will not discuss the default, or will not agree to its cure, the lender may proceed to take action under paragraph (b) of this section. The lender shall document the results of its efforts to contact the borrower and any co-maker or co-signer, and shall place in the loan file a copy of any modification agreement or repayment plan that has been offered.
- (b) Notice of default and acceleration. Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable State or local notice requirements, the notice shall be sent by certified mail and shall contain:
 - (1) A description of the obligation or security interest held by the lender;
 - (2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;
 - (3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;
 - (4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is

accelerated and full payment of all amounts due under the loan is required;

- (5) A statement that if the default persists the lender will report the default to an appropriate credit reporting agency; and

- (6) Any other requirements prescribed by the Secretary.
- (c) Reinstatement of the loan. The lender may rescind the acceleration of maturity after full payment is due and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan.
- (d) Notice to credit reporting agency. If the loan maturity is accelerated and the loan is not reinstated, the lender shall report the default to an appropriate credit reporting agency.

§ 201.51 Proceeding against the loan security.

- (a) Property improvement loans.
 - (1) After acceleration of maturity on a secured property improvement loan, the lender may either proceed against the loan security under its Title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, it may submit an insurance claim only if it complies with the requirements of paragraph (a)(2) of this section.
 - (2) The lender may proceed against the secured property under its Title I security instrument and later submit a claim under its contract of insurance only with the prior approval of the Secretary. The Secretary's decision will be based upon all relevant factors, including but not limited to the appraised value and the amount of all outstanding loan obligations on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. In proceeding against the secured property, the lender shall comply with all applicable State and local laws, and shall take all actions necessary to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.
 - (3) After acceleration of maturity on a defaulted unsecured property improvement loan, the lender may submit a claim under its contract of insurance.

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- (b) Manufactured home loans.
 - (1) After acceleration of maturity on a defaulted manufactured home loan, the lender shall proceed against the loan security by foreclosure or repossession, as appropriate, in compliance with all applicable State and local laws, and shall acquire good, marketable title to the property securing the loan. The lender shall also take all actions necessary under State and local law to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.
 - (2) Prior to foreclosure or repossession, the lender or its agent shall make a visual inspection of the property and prepare a report on its condition for placement in the loan file. If the lender determines that the property has been abandoned, the lender may

take such steps as are permitted under State or local law to repossess or foreclose upon the property, without waiting for the notice period under § 201.50(b) to run.

- (3) The lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower. This appraisal shall be performed on the homesite, unless the site owner requires that the home be removed before the appraisal can be performed, and it should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred. When the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and the appraised value shall be based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

§ 201.52 Acquisition by voluntary conveyance or surrender.

The lender may accept a voluntary conveyance of title to or ownership of the property securing a manufactured home loan which is in default, provided that (a) the lender accepts the conveyance in full satisfaction of the borrower's obligation, and (b) no claim is submitted under its contract of insurance. The lender may accept voluntary surrender of the property without satisfaction of the borrower's obligation, provided that if the lender intends thereafter to submit a claim under its contract of insurance, the lender shall acquire title to or ownership of the property and then dispose of and sell the property in compliance with State and local law, so as to

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assure that it can assign a valid and enforceable obligation, including any deficiency against the borrower, to the Secretary when submitting its claim. If the tender accepts a voluntary conveyance of title or a voluntary surrender of the property, the notice of default and acceleration under § 201.50(b) shall not be required.

' 201.53 Disposition of manufactured home loan property.

Where the lender obtains title to property securing a manufactured home loan by repossession or foreclosure, the property shall be sold for the best price obtainable before making an insurance claim. In the case of a combination loan, the manufactured home and lot shall be sold in a single transaction and the manufactured home may not be removed from the lot, unless the prior approval of the Secretary is obtained for a different procedure. The best price obtainable shall be the greater of:

- (a) The actual sales price of the property, after deducting the cost of repairs, furnishings, and equipment needed to make the property marketable, and after deducting the cost of transportation, set-up, and anchoring if the manufactured home is moved to a new homesite; or
- (b) The appraised value of the property before repairs (as determined by a HUD-approved appraisal obtained in accordance with ' 201.51(b)(3)).

' 201.54 Insurance claim procedure.

(a) Claim application. A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form, executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by all documents and materials required by the Secretary for claim review. The claim submission shall contain original copies of all notes, security instruments, assumption agreements, releases of liability for repayment of the loan, judgements obtained by the lender against the borrower, and any related documents and forms, except where State or local law requires their retention by the tender or a governmental body such as a court. As appropriate, the claim application shall be supported by the following:

- (1) Documentation of the lender's efforts to effect recourse against any dealer in accordance with any recourse agreement under ' 201.27(b) between the lender and the dealer and contained in the loan documents;

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- (2) Certification under applicable criminal and civil penalties for fraud and misrepresentation that the lender has complied with all applicable State and local laws in carrying out any foreclosure or repossession, including copies of all notices served upon the borrower or published in connection with such foreclosure or repossession; and

- (3) Where a borrower has declared bankruptcy or insolvency or is deceased, copies of the documentation required to be retained in the loan file under ' 201.42.

(b) Maximum claim period.

- (1) An insurance claim shall be filed not later than the following dates:

- (i) For property improvement loans - nine months after the date of default.

- (ii) For manufactured home loans - three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default.

- (2) The Secretary may extend the claim filing period in a particular case, but only where the lender shows clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by one of the following:

- (i) Litigation related to the loan;

- (ii) Management control of the lender or the Title I loan portfolio having been assumed by a Federal or State agency; or

(iii) The borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance on a property improvement loan.

(3) If a borrower is a "person in military service" as that term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and is in default on a loan insured under this part, any period of military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim.

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(c) Resubmitted and supplemental claims.

(1) Any insurance claim which is resubmitted with an appeal of a claim denial or a request for a waiver of the regulations in accordance with ' 201.5(a) shall be filed within six months after the date of the claim denial.

(2) Any supplemental insurance claim shall be filed within six months after the date of payment on the initial claim. A reprocessing fee, in an amount prescribed by the Secretary, will be charged for any supplemental claim.

(d) Assignment of lender's rights to the United States. Upon the filing of the insurance claim, the lender shall assign its entire interest in the loan note (or in a judgment in lieu of the note), in any security held, and in any claim filed in probate, bankruptcy or insolvency proceedings, to the United States of America. The assignment shall be made in the form provided in paragraph (f) of this section, provided that if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable in the jurisdiction where the judgment or security was taken shall be used. If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim, unless the Secretary determines that recordation by the lender in that jurisdiction is impractical.

(e) Valid and enforceable obligation when assigned. The loan obligation evidenced by the note must be both valid and enforceable against the debtor at the time the note is assigned to the United States of America. If the Secretary has reason to believe that the obligation may not be either valid or enforceable against the borrower, the Secretary may either deny the claim and reassign the loan note to the lender, or require the lender to repurchase the paid claim and accept reassignment of the note. The lender will be notified of the reasons for the claim denial or repurchase. If the lender subsequently obtains a valid and enforceable judgment against the borrower for the unpaid balance of the loan, the lender may resubmit the claim with an assignment of the judgment.

(f) Form of assignment. A lender shall use the following form of assignment, or one generally acceptable in the jurisdiction involved, properly dated, to assign the lender's entire interest in a loan note, judgment,

real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any security, in making an insurance claim:

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All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the loan qualifies for insurance) to the United States of America (HUD).

(Financial Institution)_____

By: _____

Title: _____

Date: _____

If the assignment does not appear on the note or other instrument that is assigned, it shall be duly executed on an allonge which is attached to such note or other instrument.

- (g) Denial of insurance claim. The Secretary may deny a claim for insurance in whole or in part based upon a violation of these regulations, unless a waiver of compliance with the regulations is granted under ' 201.5.
- (h) Incontestability of insurance claim payment. Any insurance claim payment on a Title I loan shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the loan obligation is made on behalf of the United States prior to the expiration of the two-year period.

' 201.55 Calculation of insurance claim payment.

The lender will be reimbursed in an amount not to exceed 90 percent of its loss on any eligible loan up to the amount of insurance coverage in the lender's insurance coverage reserve account established by the Secretary under ' 201.32, if the insurance claim is made in accordance with the requirements of this part. The amount of the insurance claim payment shall be computed as follows:

- (a) Property improvement loans. For property improvement loans, the insurance claim payment shall be 90 percent of the following amounts:
 - (1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any

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loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under ' 201.5 1(a)(2), the unpaid amount of the loan obligation shall be reduced by the

proceeds received from the property's sale or disposition, after deducting the following:

- (i) The balances due on any obligations senior to the Title I loan obligation; and
 - (ii) Customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.
- (2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.
 - (3) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.
 - (4) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed \$500.
 - (5) The amount of expenses for recording the assignment of the security to the United States.
- (b) Manufactured home loans. For manufactured home loans, the insurance claim payment shall be 90 percent of the sum of the following amounts:
- (1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the actuarial method), after deducting the following amounts:
 - (i) The best price obtainable for the property after lawful repossession or foreclosure, as determined in accordance with ' 201.53;
 - (ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other

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income, recourse recovery against the dealer, hazard insurance benefits, secured interest protection insurance benefits, and rebates on prepaid insurance premiums; and

- (iii) Amounts retained by the lender after the date of default, including amounts held or deposited to the account of the borrower or to which the lender is entitled under the loan transaction, and which have not been applied in reduction of the borrower's indebtedness.
- (2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any

period greater than nine months from the date of default.

- (3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes, and site rental, as appropriate), plus actual costs not to exceed \$1,000 per module for removing and transporting the home to a dealer's lot or other off-site location.
- (4) The amount of a sales commission paid to a dealer, real estate agent or other third party for the resale of the repossessed or foreclosed manufactured home and/or lot. Where the home is resold on-site, the commission shall not exceed 10 percent of the sales price. Where the home is resold off-site, the commission shall not exceed seven percent of the sales price.
- (5) For manufactured home lot loans, and for combination loans where both the foreclosed manufactured home and lot are classified as realty, the amount of:
 - (i) State or local real estate taxes, ground rents, and municipal water and sewer fees or liens, prorated to the date of disposition of the property;
 - (ii) Special assessments which are noted on the loan application or which become liens after the insurance is issued, prorated to the date of disposition of the property;
 - (iii) Premiums for hazard insurance on the manufactured home, prorated to the date of disposition of the property; and

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- (iv) Transfer taxes imposed upon any deeds or other instruments by which the property was acquired by the lender.
- (6) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.
- (7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed \$1,000.
- (8) The amount of expenses for recording the assignment of the security to the United States, and for costs of repossession or foreclosure other than attorney's fees and those incurred under paragraph (b)(3), but not to exceed costs which are customary and reasonable in the jurisdiction where the repossession or foreclosure takes place, as determined by the Secretary.

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