CHAPTER 4. EXTENSIONS OF TIME; TITLE EVIDENCE; HOMEOWNERS AND CONDOMINIUM FEES AND ASSESSMENTS; RECONVEYANCE

SECTION I - POLICY

4-1 IRS Tax liens and Redemption Rights. In general, properties must be free and clear of IRS tax liens prior to sale. Mortgagees must provide appropriate notice to the IRS before foreclosure sales.

4-2 Approval of Title Evidence. In general, evidence of good marketable title must be obtained prior to sale of the property.

4-3 Reconveyance. Field Offices are responsible for the reconveyance process in cooperation with Area or Regional Counsel and MIAS.

SECTION II - INTERNAL CONTROL OBJECTIVES

4-4 Requests for Extensions of Time. Requests for Extensions of Time are reviewed promptly and a response is provided within 10 working days.

4-5 Approval of Title Evidence. Evidence of good marketable title is obtained on all acquired properties, title defects are identified by authorized parties in a prompt and timely manner, and a defective title is corrected by the mortgagee or the property is promptly reconveyed in accordance with program guidelines.

4-6 IRS Tax Liens and Redemptions Rights. IRS is provided with proper notification of foreclosure and the case file is documented. Evidence of the discharge of liens is obtained and maintained in the case file.

4-7 Reconveyance. Properties authorized for reconveyance are processed in a timely manner. Separation of duties is maintained between the processing and authorization of all reconveyance deeds.

SECTION III - EXTENSIONS OF TIME

4-8 Mortgagee's Request for Extensions of Time, HUD Form HUD-50012, (Appendix 21) is the only document which may be used for requesting and approving extensions of HUD's single family claim time requirements.

A time requirement is not extended until the extension has been approved in writing by the Field Office. Verbal requests for extensions must not be accepted. Likewise, an extension request must not be granted verbally even if a mortgagee has requested that the Field Office respond within a specified time limit.

Field Offices shall accept a mortgagee's request (on Form HUD-50012) via facsimile and, if requested, may respond via facsimile in emergency situations. Emergency requests should be rare and will
usually be limited to requests for extensions of time to convey title where the property has sustained damage or they are awaiting HUD's response concerning approval to exceed preservation and protection limits. Mortgagees are responsible for verifying receipt and legibility of all requests submitted by facsimile. A mortgagee who fails to meet a time frame should expect an interest curtailment due to a time frame not being met, unless an extension has been requested and granted.

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4-9    Time Requirements for the Submission of Extension Requests. Mortgagees must submit all extension requests prior to the expiration of the time limit. A complete discussion of time requirements is contained in HUD Handbook 4330.4, FHA Single Family Insurance Claims. Field Offices are to allow 10 days from receipt of requests sent via first class mail through the U.S. Postal Service and will verify the date submitted by the date of the postmark. The date of submission will also be verified for all courier delivered requests.

A. Mortgagees are expected to submit their requests as early as possible in order to ensure timely receipt by the Field Office to avoid potential disputes and allow HUD adequate response time.

B. HUD shall allow a ten (calendar) day mailing time. Extensions received by the Field Office more than ten calendar days after the expiration of the time requirement must be denied unless the postmark or other documentation of submission proves it was submitted prior to the expiration of the time limit. Disputes as to the actual date of the extension request submission are to be handled on a case-by-case basis by the Field Office.

C. Retroactive extensions should not be necessary. Upon receipt, the Field Office must first determine if the extension request warrants a review after the fact and then must determine if an extension is justified. Then and only then may a retroactive extension be granted. Only in rare situations should there be a valid reason that would require the Field Office to review an extension request after the fact. For example, Field Offices must consider extension requests received after the time frame expired in situations where:

1. A natural disaster affected the mortgagee's ability to complete a specific action. An example of this would be when the mortgagee could not convey title to HUD because the property had been damaged due to lightning (fire), flood, earthquake or tornado, etc., within several days of the conveyance time limit.
2. The mortgagee demonstrated to the Field Office's satisfaction that their request was submitted timely, however the request was either lost or was delivered late by the U.S. Postal Service.

4-10 Extension Requests Commonly Processed by PD. Mortgagees have been advised that, unless otherwise informed by the Field Office, they are to send the following extension requests to the Field Office, Attn: Single Family Property Disposition Branch: Requests to extend the time limit for conveying title to HUD, submitting title evidence, submitting fiscal data (Part B) or submitting supplemental claims on conveyances. All other extension requests are to be submitted to the Field Office, Attn: Single Family Loan Management Branch.

Following are the most common types of extension requests that PD Field Office staff may expect to receive and are authorized to approve when appropriate:

1. Extension of Time To Convey Title. Within 30 days after acquiring possession of and good marketable title to the property, convey the property to the Secretary (24 CFR 203.359).

2. Extension of Time to Submit Title Evidence. As soon as possible, but no later than 45 days of the date the deed is filed for record, the mortgagee must send the title evidence reflecting ownership vested in the Secretary to the local HUD Office (24 CFR 203.365).

4-11 Circumstances in which Mortgagees are not Required to Request Prior Written Approval. Mortgagees are not required to request prior written approval to receive extensions of time for certain issues of bankruptcy and supplemental claims. Details of these circumstances are shown in HUD Handbook 4330.4, FHA Single Family Insurance Claims. Those circumstances are incorporated herein by reference.

4-12 Requests for P&P Actions or to Exceed Cost limits. Requests to take specific protection and preservation actions or to exceed cost limits will not be considered as requests for extensions of time. These requests are separate actions from extension requests and must be submitted and approved separately. (See Requests to Exceed Cost Limits, paragraph 3-19 Q.) Field Offices must be clear when responding to a mortgagee's request to exceed preservation and protection cost limits or a request to convey a property in a damaged condition; the Field Office response must not imply that any extension of time to complete the conveyance is granted.

Regional and Field Offices may not routinely deny extension of time
requests because they are based on P&P related items. Rather, if the mortgagee presents legitimate reasons which justify extensions of time, provide the mortgagee with an appropriate extension of time in order to prevent the curtailment of debenture interest. All offices are reminded, however that the granting of extensions is costly to the Department because of the additional debenture interest. The average nationwide monthly debenture interest cost per claim is approximately $20 per day. Field Offices should, therefore, carefully consider decisions in relation to these costs. For instance, in some cases the cost of extensions can exceed the savings sought while trying to reduce a debris removal bid.

4-13 Extension Requests Are to be Submitted to the Field Office Having Jurisdiction Over the Property.

A. Field Offices must not disregard or arbitrarily deny any extension request if the mortgagee incorrectly forwards an extension request to the wrong Branch within an office or sends it to the wrong Field Office, (i.e, Memphis instead of Knoxville). Advise the mortgagee immediately if sent to the wrong Field Office so the mortgagee may resubmit an extension request to the correct office. Similarly, if separate requests are enclosed within the same envelope, take immediate steps to ensure the documents are properly forwarded for timely response.

B. Field Office staff should recognize if the request should be handled by another Branch. For example, if the extension request is received in Property Disposition, but should be answered by Loan Management, the request must be forwarded immediately to the Loan Management Branch. Although Field Office Managers may make adjustments they deem appropriate in the assignment of duties, Field Offices should consider that mortgagees have been told where to send their extension requests, as shown in paragraph 4-10. Field Offices must ensure that each request is answered promptly by a staff person familiar with the type of extension requested.

4-14 Field Office Responsibility. It is essential to the claim review process that Field Office staff recognize and understand their responsibility to thoroughly review extension requests. Individual, written response must be made to extension requests within ten working days of receipt of the request. Otherwise, the mortgagee may be delayed in complying with HUD processing requirements and debenture interest will be curtailed. Mortgagees have been advised to contact the Field Office directly to follow-up when a response is not timely received. The Field Office response must be made on the Mortgagee Request for Extension of Time, Form HUD-50012, even if the mortgagee did not submit Form HUD-50012.

Review must be based upon the facts supplied by the mortgagee for each request. If the facts warrant approval, the extension request must be approved. Conversely, if the basis for the request does not demonstrate that the delay is due to circumstances beyond the mortgagee's control, the request must be denied.
Field Offices must avoid all situations where their actions, or inactions, may contribute, or even appear to contribute, to a mortgagee's necessity to request an extension of time. These situations include:

A. Delays in responding to a mortgagee's request to exceed preservation and protection costs or to take a specific preservation action (such as boarding).

B. Delays in responding to mortgagee's request to accept a property in a damaged condition.

C. Delays in advising the mortgagee that their extension request was erroneously sent to the wrong Field Office. (See paragraph 4-13 A.)

4-15 Extension Request Log. Single Family Loan Management and Single Family Property Disposition must maintain an Extension Request Log of all requests processed. A sample Extension Request Log is included as Appendix 55. Property Disposition must also track requests for extensions of time for submitting title evidence in the SAMS Disposition Monitoring Subsystem (DM DS EX).

Each Field Office may determine if separate logs for Property Disposition and Loan Management are preferable to one consolidated log. In making this determination, it is important to consider the guidance given mortgagees on where to submit extension requests, as shown in paragraph 4-10.

The information maintained by Field Offices on extensions is subject to periodic review by both Headquarters and the Regional Offices. All information identified on the sample log (Appendix 55) must be captured. For uniformity, the sample format for the report should be utilized.

Field Offices must maintain copies of all extension requests and responses as well as their extension logs for three years from the date of assignment or conveyance, as appropriate.

4-16 Basis for the Extension Request.

A. All extension requests must provide a valid reason to support the need for an extension of time. Mortgagees must clearly define the circumstances and reason(s) for the request. Vague or unclear requests are to be denied.

B. Extension requests based on the following reasons must be denied.

1. Investor or holder delay in obtaining required documents.
2. Staffing constraints.

3. Errors of the servicer, holder and/or of any of the previous servicers or holders.

4. Delays caused by the mortgagee's staff, agent or contractor.

5. Failure by the mortgagee's staff, agent or contractor to take appropriate, necessary or required action.

4-17 General Guidance for Establishing the Initial Duration of Extensions. Extensions must not be granted for more time than is required to complete the action.

A. Submission of Title Evidence and Filing Supplemental Claims. The initial approvals may be granted for 15 or 30 days (as appropriate), but should be granted for no more than thirty days. The mortgagee is to be notified that if additional time is needed, another request should be submitted.

B. Time to Convey Title. Usually, initial approvals should be limited to increments of not more than thirty days. If the reason for the delay will realistically take more than thirty days to correct and the reason for the delay is due to circumstances beyond the mortgagee's control, up to 60 days may initially be approved. The mortgagee is to be notified that if additional time is needed, the mortgagee must request and support the need for any additional extension. Field Offices must not grant extensions for more time than is necessary to complete the conveyance.

4-18 Circumstances Will Rarely Justify Approval of Extensions for the Following Time Limits. Field Offices must review any such request very carefully.

A. Time to submit fiscal data. (45 days should be sufficient).

B. Time to submit title evidence. (45 days should be sufficient).

C. Time to submit a supplemental claim, except for deficiency judgment costs or hazard insurance premium refund adjustments), beyond six months from the date of final settlement.

D. Time to submit a supplemental claim for deficiency judgment costs beyond one year from the date of final settlement.
Prohibited Extensions. Mortgagees must comply with HUD requirements for submitting a claim involving the conveyance of property. Failure to comply results in a curtailment of debenture interest to the date the action should have been taken or to the date to which it was extended by HUD. A complete discussion of time requirements is contained in HUD Handbook 4330.4, FHA Single Family Insurance Claims. Those requirements most applicable to Single Family Property Disposition are summarized in this Section. Under no circumstances shall Field Offices approve an extension of time for the submission of the Single Family Application for Insurance Benefits, Form HUD-27011, Part A. Mortgagees must submit their Claim for Insurance Benefits on the date the deed is filed for record (24 CFR 203.360, 203.351).

Authority to Approve Title. The Chief Property Officer or designee is responsible for reviewing and approving title evidence on all single family conveyances. The title approval process must be expedited and given priority in order to reduce interest payments by the Department.

Title Evidence Submitted by Mortgagee to Field Office.

A. Title evidence must be submitted to the Field Office within 45 days after the date the deed was filed for record. Title evidence must be accompanied by a copy of Part A of the claim, a copy of the mortgage instrument containing a complete legal description of the property and a copy of the deed sent for recordation. The original deed is sent to the Field Office only after actual recordation. The Field Office must not withhold approval pending receipt of the original recorded deed. The date of acquisition of title is the date the deed or other document conveying title is filed for record.

B. Satisfactory Types of Title Evidence are:

1. Fee or Owner's Title Policy.
2. Mortgagee Policy of Title Insurance.
3. Abstract and Legal Opinion.
4. Torrens or Similar Title Certificate, or;
5. Title Standard of U.S. or State Government.

(See 24 CFR 203.385 for a detailed description of these types of title evidence.)

Tracking and Monitoring Mortgagee's Request for Extensions of Time to Submit Title Evidence. It is important that Field Offices use the SAMS Disposition Monitoring Subsystem (DM DS EX) to record
requests for Extensions of Time to Submit Title Evidence. Form HUD-50012 is the only document which may be used to approve extensions, including extensions of time to submit title evidence. The CPO is responsible for approving or denying the Mortgagee's Request for Extensions of Time to submit title evidence. (See, also, Extension Request Log at paragraph 4-15.)

4-23 Time Frames for Approval or Denial of Title Evidence. The CPO is required to approve or deny the title evidence within 10 days of receipt from the mortgagee. See Section III for a discussion of policy regarding requests for extension of time.

4-24 Review of Title Evidence. The Field Office must review the title and supporting documentation. If it is incomplete or inadequate, the title must be returned to the mortgagee for correction and will be considered as not having been submitted until it is returned with the required corrections. Review for the following:

A. Title in the Secretary's Name. Title must be in the Secretary's name. Deeds are to be recorded in the name of the "Secretary of Housing and Urban Development, his successors and assigns" with the address of the Field Office and "Attention: Single Family Property Disposition Branch." The purpose of this requirement is to assure that taxing authorities send tax bills to the Field Office for payment, rather than to HUD Headquarters.

B. Authority to Issue Title Evidence. Title evidence must be signed by an agent of the issuing company or attorney to evidence a valid issuance. See paragraph 3-11 E. for information on title evidence for Section 312 properties.

C. Property Description. The property description in the title evidence must agree with that shown in the mortgage.

D. Amount of Title Insurance. The amount of title insurance coverage must be equal to the unpaid principal balance of the mortgage unless the mortgagee used the Claims Without Conveyance of Title. (See Claims Without Conveyance of Title, paragraph 4-27.)

E. Good and Marketable Title. Title conveyed to the Secretary must be good and marketable. Defective title is a condition which precludes the conveyance of good marketable title by the Secretary to a purchaser. Evidence of title must show that according to public records there are no outstanding prior liens, including any past due and unpaid ground rents, general taxes, or special assessments.
1. If Generally Accepted. If the title and title evidence are acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, the Field Office is to consider the title as good and marketable.

2. Survey Required. If there are serious questions (e.g., location of lot lines, placing of improvements, walks, driveways, easements, or encroachments) concerning the accuracy of the survey in the title docket, a new survey must be ordered. In cases of disagreement, however, about whether title evidence is acceptable, the Field Office Manager will make the final decision.

See paragraph 11-15 for minor title defects that delay sales closings.

4-25 Objections to Title.

A. Criteria for Objection. Refer to 24 CFR 203.389 for specific items that are not cause for objection. Provided the mortgagee has complied with title evidence requirements shown at 24 CFR 203.385, title evidence should be returned to the mortgagee only if it is clearly and substantially incomplete or inadequate. (See paragraph 4-25 E.)

B. Additional Information. Field Offices should not disapprove title evidence because additional information or minor corrections are needed. Instead, Field Offices should ask the mortgagee to submit the additional information needed to make the needed corrections. When the additional information or corrections are received by the Field Office, the title approval letter is to be issued with the original receipt date of the submission entered in the Date Title Received in Field block.

1. Establishing Additional Title Evidence Requirements. Field Offices should consider the customary practices and requirements of other offices within its respective Region before establishing additional title evidence requirements. If title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title evidence may be considered good and marketable.

In the event the CPO strongly believes the marketability of title cannot be determined without reviewing certain documents, i.e., copies of restrictions or covenants, etc., that are not customarily included in title packages, the Field Office must first issue a circular letter to mortgagees instructing them that such documentation is required as part of the title package for the Field Office. Also, if the CPO believes that the title evidence is substantially incomplete without the additional documentation, the Field Office's circular letter must advise mortgagees that their title packages will be
considered substantially incomplete and will be rejected when their submissions do not include the required documentation.

2. Specific Requirements. Any circular letter issued by the Field Office is to be very specific and limited to the particular requirements being established.

C. Unpaid Taxes, Water, Sewer or Other Assessments. The Field Office should not object nor withhold approval if evidence reflects unpaid taxes, water and sewer or other assessments. These items must be paid by the Field Office.

D. Open Mortgages/Other Liens. All open mortgages or other liens on the real estate, except those held by HUD, must be satisfied of record before title is approved. The mortgagee or servicer has the responsibility for satisfying these liens.

Uniform Commercial Code (UCC) Financing Statements or similar security instruments that evidence chattel liens on particularized fixtures that had been purchased by a mortgagor and placed on the property are to be allowed as liens of this type are not liens against the real estate in general but are only liens that are secured by identified fixtures on the property. Consequently, such liens are not grounds for the rejection of title, although such liens must be disposed of by the time HUD sells the property. If the Field Office believes that it may be cost effective to allow the liened fixtures to remain on the property, the Field Office should first attempt to negotiate with the lienholder for the removal of the lien at no cost or a reduced cost. If the negotiations are such that it is cost effective to pay the lienholder for removal of the lien, proceed with payment. If not, the lienholder should be allowed to remove the fixture. In any event, secure appropriate documentation that the lien has been removed.

E. Easement, Encroachments, Rights of Way, Mineral Rights, and/or Other Condition not Considered in the Original Appraisal. Title defects are to be considered on a case-by-case basis. The Field Office must not object to title for defects as shown at 24 CFR 203.389 or in a specific waiver. Salability and property value play a dominant role in acceptance or rejection of such exceptions which exceed the guidelines set forth in Section 24 CFR 203.389. The sale of the property is a first priority provided the exceptions do not have an adverse effect on marketability. The CPO or the Area or Regional Counsel have the authority to determine the effect on marketability.

The Field Office must not automatically object to title solely
because title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the conditions shown at 24 CFR 203.389 or in a written waiver. In these cases Field Offices may, at their option, approve title if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Field Office to compensate for any anticipated loss as a result of the title condition. Disagreements on the value of anticipated loss are to be resolved by the Chief Property Officer or the Area or Regional Counsel.

4-26 Rejection of Title Evidence. If the CPO rejects title evidence because title does not comply with HUD requirements as shown at 24 CFR 203.385 or with requirements of any Circular letter issued by the Field Office (see paragraph 4-25 B.), and the mortgagee fails to make the requested corrections or to agree with the Field Office's determination of the value to compensate for loss as a result of conditions of title not considered in the original appraisal, as discussed in paragraph 4-25 E., the CPO may decide after consulting with the Area or Regional Counsel that the property should be reconveyed and HUD reimbursed for all insurance benefits and costs. If so, follow reconveyance procedures shown in Section VII.

In those situations where title was previously rejected because additional information required by the Field Office was not included with the original submission, the Field Office is to use the date that the resubmitted, completed title evidence was received as the official receipt date for the title approval letter. In this situation, follow procedures shown at paragraph 4-30 E.

4-27 Claims Without Conveyance of Title (CWCOT) - Review and Approval of Title Evidence. The CWCOT program allowed mortgagee claims to be filed without title. This program was administered by Loan Management and, although the program has been discontinued, the procedure for acquiring property appraisals to determine fair market value remains available when required by HUD or upon request from the mortgagee. The Field Offices may, therefore, occasionally be required to review title evidence in which the amount of title insurance coverage was based upon CWCOT procedures. If CWCOT procedures were used in the foreclosure process, the amount of title insurance coverage should be obtained from the appraised value of the property. The mortgagee obtains this amount from one of the following sources:

A. Amount of Title Insurance Coverage. The amount of title insurance coverage will be the fair market value shown in Form HUD-91022, Mortgagee Notice of Foreclosure Sale. The amount of title insurance coverage will be the fair market value shown in the HUD-91022, Part B line 5. Mortgagees must not use the
Commissioner's Adjusted Fair Market Value shown on the
HUD-91022, line 7 of Part B. Refer to the handbook
Administration of Insured Home Mortgages, HUD 4330.1, REV 3,
paragraph 9-7 for an example of Form HUD-91022 and for further
information on fair market value.

B. Latest FHA Appraisal. If the mortgagee has not received the
completed Part B of Form HUD-91022 from the Field office, it
must use an amount equal to that contained in the latest FHA
appraisal report ordered in conjunction with the CWCOT.

1. If the mortgagee was required to obtain an appraisal from
the Sheriff's office according to State or local law, it
must use the amount of that appraisal for the title
insurance coverage.

2. If no CWCOT appraisal report or copy thereof is available,
the amount of title insurance coverage must be equal to
the unpaid principal balance under the mortgage. This
amount must also be used when a title is conveyed to HUD
through a deed in lieu of foreclosure.

4-28 SAMS Tracking and Monitoring of Title Evidence. The SAMS
Disposition Monitoring Subsystem (DM DS TE) must be used to track
and monitor the receipt and approval or denial of title evidence.

4-29 The Approval Letter. The Field Offices must use the SAMS
Disposition Monitoring Subsystem (DM DS TE) to produce title
approval letters. Data input to SAMS interfaces with the Mortgage
Insurance and Accounting (MIAS), Single Family Claims (SFC), A43C
system and is used by MIAS to verify title approval and to determine
if time frames were met.

Title approval letters are used to advise the mortgagee when title
was approved and allows the mortgagee to submit Part B of the Single
Family Application for Mortgage Insurance Benefits (HUD 27011).

4-30 Guidance for Use of the SAMS/A43C Interface for the Title Approval.

A. Addressee of Title Approval Letter. It is extremely important
that the title appraisal letter be sent to the address
requested by the mortgagee. SAMS provides a default address
which can be altered. Before committing the Update/Approve
Title Evidence (DM DS TE) screen, proof the address and, if
appropriate, change the "Send Letter to:" address which the
system previously infilled to the correct address provided by
the mortgagee. The address entered is used to route the title
approval letter back to the mortgagee. Note: After the screen
is committed (when Approve (Y/N)=Y), if the DM DS TE is entered
again, the user will notice that the changed address defaults
to the former address. The correct address is, however,
transmitted to A43C.
B. Rejection of Title Evidence. The Field Office is responsible for notifying mortgagees of rejection of title evidence.

C. Rescission of Title Approval. If title approval was recorded in SAMS and transmitted to A43C via the interface and the Field Office later rescinds title approval, the Claims subsystem will be updated with the new information only if the Part B claim has not yet been paid. Once the claim has been paid, no changes can be made to the title approval file maintained by A43C. If information about the rescission is received prior to claim payment, the A43C file will show that title has not been approved and the claim cannot be paid. The Field Office must send notification to the mortgagee of any rescission of title approval, regardless of whether it is done before or after claim payment.

D. Title Approval Dates. The dates shown on the upper right-hand corner of the Title Approval letter are very important, as follows:

a. Date Title Received in Field. The date the Field Office states it received title evidence. This date is critical because claims are curtailed by this date. Field Offices must use good judgment in determining when to return title evidence to mortgagees. Return the title evidence only if it is clearly and substantially incomplete or inadequate. The Date Title Received in Field will be the date that acceptable title evidence was received in the Field Office. See paragraph 4-25 B. for Date Title Received when original title evidence was rejected or approval delayed because of requirements of the Field Office for additional documentation.

b. Date of Title Approval. The date of title approval by the CPO or designee. This date never changes in SAMS and will be included in the system-generated letter. In cases where the Field Office previously rejected title because of inadequate or incomplete information not included with the original submission, but which are subsequently approved, the official date of title approval is the date that the resubmitted, completed title evidence was received.

c. Date of This Letter. On the date of title approval, a system-generated file will be sent to claims overnight. When the title approval letter is generated by the Field Office, the Date of This Letter must be the date the title approval is mailed. If not mailed on the date shown on the letter, the date must be changed to the date of mailing. The Date of This Letter is the date MIAS will use to determine if Part B of the claim was submitted on time.
E. Change in Title Approval Dates. Any change to the date of title approval will be accepted by A43C only if the Part B claim has not yet been paid. If the claim has not been paid, the approval dates stored in the A43C authorization file will be updated with the new dates. The new dates will be used to edit the claim. If a change is made in title approval dates after the Part B claim was paid based on the earlier approval, the Field Office must produce a new title approval letter.

SECTION V - IRS TAX LIENS AND REDEMPTION RIGHTS

4-31 General. When the mortgagee gives proper notice to the IRS of a foreclosure sale and the IRS does not object, the property is considered to be free and clear of a tax lien. However, if an IRS lien exists, it is still subject to a 120-day redemption period available only to the IRS. Where the mortgagee fails to give proper notice, the IRS is not limited by the 120-day redemption period and a discharge of the lien must be obtained. Marketing and sale of the property should proceed. HUD will indemnify purchasers and their lenders for any damage or loss incurred because of the tax lien.

4-32 Discharge of Lien. Where the mortgagee failed to give the IRS proper notice that the property was to be foreclosed and when the fair market value is less than HUD's interest in the property, PD must obtain a discharge of the tax lien and must provide a fair market appraisal, the cost of which should be billed to the mortgagee. An application by the Secretary of HUD to the IRS is provided as Appendix 22.

4-33 Indemnification. The Field Office must advise purchasers and their lenders that HUD will indemnify them for any damage or loss as a result of any tax lien. Based on HUD's promise to indemnify, a sale may be closed before receipt of the discharge of the lien from the IRS.

4-34 Appraisal. The appraisal obtained upon conveyance may be used to comply with appraisal requirements shown in 4-32.

4-35 Recordation of Discharge of IRS Lien. If the IRS has discharged the lien but the discharge has not been filed for recordation, it must be recorded in the same office in which the lien was originally recorded.

4-36 Fair Market Value Exceeds Secretary's Interest.

A. Lien has been Discharged. Even when the IRS has discharged the lien, if the Fair Market Value is more than the Secretary's interest, the Field Office may not close the sale until
expiration of the redemption period because the IRS still has the right of redemption.

B. Lien has not been Discharged. If the IRS does not discharge the lien, HUD must pay to the IRS any excess received at the sale over the Secretary's investment up to the full amount of the IRS tax lien. Under this circumstance, no indemnification is required, unless requested by the new purchaser or lender to cover the period required to pay and receive a release of the lien from IRS.

SECTION VI - HOMEOWNER'S AND CONDOMINIUM FEES AND ASSESSMENTS

4-37 Processing and Payment. HUD, as the owner of a condominium unit, is entitled to the same maintenance benefits, use of common space, etc., as was the former mortgagor, and is also required to pay the monthly association fees and assessments when they become due and payable. Procedures unique to association fees and assessments are explained below.

A. Mortgagee's Responsibility. Mortgagees are under no obligation either before or at the conveyance of title to HUD to pay delinquent association fees or assessments. Because payment is not mandatory, mortgagees cannot be held liable for any interest, late payment penalties, or legal fees which are connected with or generated when HUD does eventually acquire title. In those states where unpaid fees and assessments are given priority over first mortgages of record, mortgagees are required to pay all delinquent fees to protect the validity of their first mortgage. These payments are added to the mortgage indebtedness and are secured under the mortgage. In those states where no priority is given, mortgagees may pay delinquent fees voluntarily. In either case, mortgagees are reimbursed for these payments if they file a claim for insurance benefits. Field Offices should determine if unpaid fees and assessments in their area have priority over the first mortgage of record.

B. Field Office Responsibility. Except in those states which provide for the priority over the first mortgage, any lien which arises against the property as a result of unpaid association fees or assessments are normally extinguished when the mortgage is foreclosed. In the event foreclosure was not conducted properly and the lien was not extinguished, or the association filed a lien against the property after HUD acquired title and the lien now affects the marketability of title, payment may be made to the association in accordance with the procedure indicated below.
1. Payment of Association Fees Prior to Ownership. HUD has no legal obligation to pay association fees which were incurred prior to HUD's ownership of the property. However, Field Offices may pay such fees and assessments (including legal fees, collection fees, interest, or late payment penalties) that were incurred during this period. The decision to pay is optional and is to be made on a case-by-case basis, taking into consideration such things as: whether or not the lack of payment will affect the marketability of title; the viability of the association where HUD owns substantial numbers of units; the amount of the fees; and whether other owners are paying their dues in an effort to keep the association viable. If there is a need to pay these fees, negotiate for the reduction of these charges with the association prior to payment. These past due fees need not be liens against the property for the Field Office to pay them.

2. Upon Acquisition. Once HUD has acquired a unit subject to fees and assessments, promptly notify the association of the change in ownership and request that the association send all future bills relating to association fees, as well as payment booklets and association by-laws to the Field Office. These association fees and assessments are to be paid by the Field Office when they become due and payable. Do not wait until sales closing to pay association fees. If penalties such as legal fees, collection fees or interest are incurred because of HUD's failure to pay association fees on time, then the Field Office must pay them.

3. Payment of any association fees or assessments prior to title being conveyed to the Secretary in connection with mortgage insurance claims may not be made. Any requests by associations to have HUD pay assessments directly to the association during the period of default and foreclosure must be denied.

SECTION VII - RECONVEYANCE

4-38 General. This section provides guidance when considering reconveyance. Reconveyance should be used sparingly, and only as a last resort where other reasonable actions have not resolved the problem. Reconveyance is not to be used in situations where properties have been conveyed occupied without authorization. Field Offices are required to handle processing of reconveyance without forwarding them to Headquarters for OGC review. All efforts should be directed toward expediting the time it takes to reconvey properties and decrease HUD's losses due to delays.
4-39 Properties Damaged Due to Mortgagee Neglect. After first considering the procedures for resolving the problem as described in paragraph 3-27, the option of reconveyance may be considered.

4-40 Properties Conveyed Damaged without HUD Authority. When it is revealed that a property damaged by fire, flood, earthquake, or tornado was conveyed without HUD's authorization or a certification letter (see 24 CFR 203.379 for requirements of the mortgagee certification), and actions described in paragraph 3-27 cannot resolve the problem, the option of reconveyance may be considered.

4-41 Reconveyance and Reimbursement to Lenders on Uninsured Cases. On occasion mortgagees will submit claims on properties that were not insured by HUD, or HUD will learn that a property in inventory should not have been conveyed because HUD had entered into an Indemnification Agreement with the mortgagee. If the property is in HUD's inventory when the Field Office becomes aware of the error, the property must be placed in a hold off market status. Field Office Area or Regional Counsel shall review any correspondence from the mortgagee regarding the error as well as the deed to the property and the form HUD-27011 for the property. Counsel's review is for the purpose of ensuring compliance with 24 CFR 203.363.

Upon approval to reconvey, contact MIAS-SFC to confirm that no claim was paid. If a claim has not been paid and no expenses have been incurred, prepare a Quitclaim Deed. Have the deed recorded and forward a copy to the mortgagee in accordance with the procedures outlined in paragraph 4-44 E. If a claim was paid in error, follow procedures shown in paragraph 4-44, steps C. and E.

If the property has been sold, the Chief Property Officer must review all correspondence from the mortgagee regarding the error, as well as the sales expenses, and actual expenses incurred while the property was in HUD's inventory (taxes, utilities, repairs, management fees, etc.). Once the Field Office arrives at an offering amount (sales price less our sales and other expenses), send the letter shown in Appendix 23 to the mortgagee. Upon receipt of the mortgagee's acceptance of HUD's offer, promptly process a DPI-1106 in that amount and forward to DPI for payment.

4-42 Reconveyance Initiated by the Mortgagee. When the Insurance Claims Division receives a request directly from the mortgagee to reconvey the property, all further payment of insurance claims is suspended and the Insurance Claims Division notifies the Field Office of the reconveyance request by memorandum. Upon receipt of the memorandum, the Field Office must check the inventory and initiate appropriate reconveyance action. If the property is not in the Field Office inventory, and no claim payments have been paid, the Insurance Claims Division will forward a memorandum, along with the legal description of the property, to OGC requesting a Quitclaim Deed. The Insurance Claims Division will forward the Quitclaim Deed to the mortgagee.

4-43 Reconveyance Due to Title Defects. When title defects such as encroachments, easements, and rights of way reduce the property
value by a measurable amount, which may detract from the property value but does not prevent its sale, the property need not be reconveyed. Payment of an insurance claim should generally not be denied solely because the title evidence reveals a condition of title which did not exist in the original appraisal. In such instances, the Field Office should contact the mortgagee to reach an agreement on a value which is adequate to compensate for the anticipated loss to the mortgage insurance fund as a result of the condition. If the mortgagee agrees to accept a reduction in insurance benefits of that amount, the claim should be paid. This procedure will result in fewer reconveyance, reduce holding costs, and the time required by the mortgagee to clear title. See, paragraph 11-15 for information on indemnification against loss as a result of minor title defects.

4-44 Procedures for Reconveying Properties to Mortgagee.

A. After the Field Office has exhausted efforts to resolve problems with the mortgagee as it affects defective title, or property damaged due to mortgagee neglect, or conveyed damaged by fire, flood, earthquake or tornado without HUD's authorization, the Field Office must reconvey. The Field Office Area Counsel (Regional Counsel in co-located offices only) will review the case to be reconveyed, for conformity with 24 CFR 203.363. In order to speed up the process, do not refer case to Regional Counsel except in co-located offices.

B. Upon approval from the Area/Regional Counsel, place the property in the appropriate "Held Off Market Code." Send the mortgagee a 30/90 day Preliminary Notice of Intent to Reconvey (Appendix 40) to correct problems. (Thirty days for title defects and 90 days for mortgagee neglect or damaged properties.) Should mortgagees determine during the course of correction that additional time is needed to correct the problem, a written request must be made to the Field Office within the above time frames. Field Offices are authorized to grant one 30-day extension on a case-by-case review. Concurrently, the property will be programmed "Mortgagee Action Required," HOM-6. The HOM code and the date of the Preliminary Notice must both be coded in SAMS.

C. Only after completing steps A and B above, to stop all further claims (partial, final or supplemental) to the mortgagee for a particular property being reconveyed, promptly forward a copy of the Preliminary Notice of Intent to Reconvey which was sent to the mortgagee to Mortgage Insurance Accounting and Servicing
- Single Family Claims (MIAS-SFC) staff and instruct MIAS-SFC to stop payment on Part A of the claim form if not already paid. Instructions should also request that a hold be placed on the claim until further notice. This information can be FAXed or mailed to MIAS-SFC's Systems Management and Control Section, HFMPMS, P.O. Box 44807, Washington, DC 20046-4807. The Single Family Claims Branch can be reached at (202) 708-1166. The FAX number is (202) 708-0299.

D. If after 30 or 90 days (as shown in B above) the mortgagee has not corrected the title defect or damage and no extension was granted, send the mortgagee a Reconveyance Letter (Appendix 42) stating the reason for reconveyance and requesting reimbursement to HUD. Send a copy to MIAS-SFC. The Reconveyance Letter is HUD's first written demand asking for reimbursement of HUD's expenses relating to the conveyance. This letter provides the basis necessary to establish an accounts receivable and subsequent demands for payment as required by Claims Collection Procedures shown at in 24 CFR 17.72 and 24 CFR 17.102. Along with the Reconveyance Letter, send the attachment to the letter, which may be used by the mortgagee as an invoice for use in sending their remittance. The Field Office should now code the case in SAMS as HOM-3.

Partial and final settlement figures can be obtained from the A43C Single Family Claims Subsystem, using the K-06 screen or the SAMS Reconveyance Reimbursement Report. A printout of this information is to be made a permanent part of the case file and the dollar amounts are to be used to determine the claims portion of the reimbursement amount request to the mortgagee. If the Field Office does not have the capability to secure reports from the A43C subsystem, contact the Regional Office. Field Offices can also contact the Single Family Claims Telephone Center for information on claims payments. Mortgagors should be assessed holding costs as computed on a national basis in lieu of actual expenses. Those costs can be determined from the SAMS Reconveyance Report.

E. Headquarters will provide notification that the remittance has been received from the mortgagee either by check or offsetting action. The Field Office will prepare a Quitclaim Deed signed by the Field Office Manager or Director of Regional Housing. Send a copy of the executed deed to the mortgagee with a copy of Cover Letter (Appendix 49) via certified mail, return receipt requested and a copy is placed in the case file.

Staff or the appropriate REAM must record the original deed at
the courthouse in the county where the property is located. Send the recorded deed to the mortgagee with the Cover Letter (Appendix 65) via certified mail, return receipt requested. Documentary stamps and other costs may be reimbursed via standard voucher procedure. A copy of the recorded Deed must be sent to MIAS/SFC. Upon receipt of this deed, MIAS/SFC will take action to delete the case from the Field Office inventory.

The Field Office should immediately notify MIAS-SFC if the problem is resolved or payment is received. This should be followed up in writing and coded into SAMS. Single Family Claims will remove the non-payment flag in A43C and cease collection activities based on this notification. If payment is received, you should provide a copy of the check to MIAS-SFC.

Each Field Office should establish a log for recording all reconveyance requests, from the date the decision to reconvey is made to the date the Quitclaim Deed is mailed. The log should indicate at least the mortgagees ID number, FHA case number, property address and the dates of each significant action.

F. At least two demand letters must be sent before offsetting action is allowed on collection activities of the Federal government. If no response or an unsatisfactory response is received from the first demand (Reconveyance Letter, Appendix 42), a second written demand letter (Notice of Intent to Collect by Administrative Offset, Appendix 64), must be sent. This Notice advises of HUD's intention to offset and provides the mortgagee's right to appeal. Allow a 30-day response time.

G. Request for Appeal/Administrative Review. There are two situations in which a mortgagee can appeal HUD's action.

1. The first occurs when the mortgagee appeals the reconveyance action. Under this procedure, Field Office Managers are to review the appeal request to determine if the property should be accepted or if the request should be denied. If the decision is to accept the property, a memorandum must be forward to MIAS-SFC to cancel the reconveyance action. If the request is denied, forward a letter to the mortgagee notify them of the denial and request corrective action or the return of funds previously disbursed.

2. The second situation occurs when the mortgagee appeals the offset action. When this occurs, the Regional claims Collection Officer, upon receipt of the appeal, will forward the request to the Regional Director, Office of Housing, for an administrative review and final decision on the offset appeal action.
H. If 30 days have passed since the second demand was made and you did not receive an adequate response from the mortgagee, the Field Office should:

1. Call the MIAS-SFC telephone center (paragraph 4-44 C.) to verify whether or not MIAS-SFC has received copies of the billing letters (First Demand Letter, Appendix 42 and Second Demand Letter, Appendix 64).

   If not, provide copies of the original billing and the second demand letters. These provide sufficient basis for MIAS-SFC to proceed with the administrative offset actions.

2. Verify whether or not a collection has been received either by the Field Office or MIAS-SFC.

   If collected in the Field, forward a copy of the check to MIAS-SFC so that further collection activities can be ceased. If not, MIAS-SFC will automatically initiate offset actions against the mortgagee. You can verify this by calling the MIAS-SFC Telephone Center.

   Once collected, MIAS-SFC will forward a copy of the collection information (copy of check or offset action) to the Field Office. The Field Office must then prepare and forward the Quitclaim Deed to the mortgagee.

3. MIAS will initiate the procedure for deletion of the case SAMS.

SECTION VIII - PROCESSING REQUIREMENTS FOR SAMS

4-45 General. See the SAMS User Handbook for processing procedures for title approval and reconveyance of acquired properties. Special care should be taken with regard to tracking the various time frames in SAMS.