

CHAPTER 6. CHANGE OF MORTGAGORS (ASSUMPTIONS) OR SERVICERS  
AND SALE OF MORTGAGES

6-1 POLICY OF FREE ASSUMPTIONS WITH NO RESTRICTIONS. Mortgagees must not impose, agree to or enforce legal restrictions on conveyances, or on assumptions, unless specifically permitted by CFR 203.512, or specified in a junior lien granted to the mortgagee after settlement.

6-2 ASSUMPTION RESTRICTIONS IMPOSED BY HUD. HUD places certain restrictions on the assumption of insured mortgages originated since December 1, 1986. Depending upon when the mortgage was originated, HUD or the DE mortgagee may have to review the credit of the person seeking to assume the mortgage.

- A. Mortgages originated before December 1, 1986, generally contain no restrictions on assumptions.
- B. Mortgages originated on or after December 15, 1989, require a review by the mortgagee to determine if a creditworthiness review of the assumptor is required. Some mortgages also contain restrictions on assumptions when the assumptor will not occupy the home as a principal residence.
- C. Mortgages not included in Paragraphs A or B contain assumption restrictions that have expired.

6-3 CREDIT REVIEW REQUIREMENTS

A. Policy of free assumability with no restrictions. If approval is required by the mortgage, the mortgagee must not approve the sale or other transfer of all or part of the property, or the sale or transfer of a trust owning all or part of the property, whether or not any person acquires personal liability under the mortgage in connection with the sale or other transfer, unless:

- 1. At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by HUD;

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2. The selling mortgagor retains an ownership interest in the property; or

3. The transfer is by devise or descent.

B. For mortgages originated prior to December 1, 1986, no

creditworthiness restrictions apply to these mortgages unless the seller requests a release from liability.

C.Mortgagees should note that some mortgages executed between December 1, 1986 and February 5, 1988, contain a requirement for creditworthiness review that is not enforceable. Mortgages from this period are freely assumable despite any restrictions stated in the mortgage.

1.The First 12 Months. The first 12 months after execution (closings) of the mortgage if the original mortgagor was an owner-occupant who purchased the property as a primary or secondary residence; or

2.The First 24 Months. The first 24 months after execution (closing) of the mortgage if the original mortgagor purchased the property as an investment.

NOTE:The above time frames have expired. The information has been printed for HUD's monitoring purposes.

3.Creditworthiness Review Required. Assumption creditworthiness processing must be completed within 45 days from the date the mortgagee receives all the necessary documents.

D.Mortgages subject to the restrictions of the Department of Housing and Urban Development Reform Act of 1989. The Act applies to mortgages that are subject to:

1.A conditional commitment or master commitment issued by HUD on or after December 15, 1989;

2.An appraisal report or master appraisal report signed by the DE underwriter on or after December 15, 1989; and

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3.A certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after December 15, 1989.

4.Creditworthiness of the Assumptor. Either HUD or the DE mortgagee must find the assumptor creditworthy. This policy extends for the life of the mortgage and applies to:

a.mortgagors who take title to the property subject to the mortgage without assuming personal liability for the debt;

b.mortgagors who assume and agree to pay the mortgage.

5.Documentation Required For Creditworthiness Reviews. See Chapter 4-4 of HUD Handbook 4155.1 REV-4, dated June 23, 1992, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties, for additional information about this requirement and additional provisions of the Act.

6.Creditworthiness Review Required. Assumption creditworthiness processing must be completed within 45 days from the date the mortgagee receives all the necessary documents.

#### 6-4 OWNER OCCUPANCY REQUIREMENTS AND EXCEPTIONS.

A.Investors And Secondary Residences. Mortgagees must not approve the sale or other transfer of a property to a person who cannot be approved as a substitute mortgagor because the property will not be a primary residence or a secondary residence.

#### B.Investor Restrictions.

1.Assumptions involving a Release of Liability. An investor who assumes a high ratio mortgage (1) originated by an owner-occupant, and (2) pursuant to an original transaction where the seller is being released from liability, must pay down the mortgage to 75 percent loan-to-value (LTV) if the original transaction involved:

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a.a HUD Conditional Commitment;

b.a HUD Master Conditional Commitment;

c.a VA Certificate of Reasonable Value or Master Certificate of Reasonable Value; or

d.an Appraisal or Master Appraisal signed by a direct endorsement underwriter on or after February 5, 1988.

2.Private Investor Restrictions - Restrictions of The HUD Reform Act of 1989. (Also See Paragraph 6-3D.) Private investors may only assume HUD-insured mortgages under the following conditions:

a.Section 203(K) rehabilitation mortgages where the maximum loan-to-value ratio is 85 percent;

b.HUD-owned properties where the maximum loan-to-value mortgage for a one-family dwelling is 75 percent and 85 percent for a two-to-four family dwelling;

c.using streamline refinancing without an appraisal;

d.a member of the armed forces who is unable to occupy the property due to a duty assignment;

e.the ban on private investors does not apply to an Indian tribe as provided in Section 248.

C.Secondary Residences. Restrictions Of The Cranston-Gonzalez National Affordable Housing Act Of 1990. The Act prohibits HUD from insuring a mortgage for a secondary residence and prohibits the assumption of an FHA mortgage on property for intended use as a secondary residence except for hardship exceptions approved by HUD or under the conditions listed in Paragraph 6-4B2. This limitation on secondary residences is effective for mortgages insured:

1.pursuant to a conditional commitment issued on or after January 27, 1991; or

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2.pursuant to an appraisal report or master appraisal report signed by a Direct Endorsement underwriter on or after January 27, 1991; or

3.pursuant to a Certificate of Reasonable Value or Master Certificate of Reasonable Value issued by the Department of Veterans Affairs on or after January 27, 1991.

D.Secondary residence means a dwelling:

1.where the mortgagor maintains or will maintain a part-time place or abode and typically spends (or will spend) less than a majority of the calendar year;

2.which is not a vacation home, and

3.which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

E.Undue hardship means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from the mortgagor's home to his or her work place.

F.Vacation home means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

6-5 ENFORCEMENT OF CREDIT REVIEW AND OWNER-OCCUPANCY REQUIREMENTS.

A. Due-On-Sale Clause. Each mortgage must contain a due-on-sale clause permitting acceleration. If a sale or other transfer occurs without mortgagee approval and a prohibition in CFR 203.512(b)(c), the mortgagee must enforce this requirement by requesting approval from the local Field Office to accelerate the mortgage provided that acceleration is permitted by law.

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B. The mortgagee shall accelerate if approval is granted. This applies only if the application by the mortgagor is dated on or after December 1, 1986.

C. Acceleration of the Mortgage. The mortgagee must contact the local Field Office for guidance with respect to acceleration of a mortgage if HUD assumption requirements are not met and the homeowner cannot or will not comply with HUD's requirements at the time the assumption is discovered.

6-6 RELEASE OF LIABILITY.

A. The mortgagee must release a selling mortgagor from any personal liability for payment of the mortgage debt, if permitted by CFR 203.258, and in accordance with the following procedures:

1. the mortgagee receives a request for a creditworthiness determination for a prospective purchaser of all or part of the property;

2. the mortgagee performs a creditworthiness determination if the mortgagee is approved for participation in the Direct Endorsement program, or the mortgagee requests a creditworthiness determination by the local Field Office.

3. the prospective purchaser is determined to be creditworthy under the standards applicable when a release of the selling mortgagor is intended;

4. the prospective purchaser assumes personal liability by agreeing to pay the mortgage debt; and

5. the mortgagee provides the selling mortgagor with a release of personal liability form.

B. Form HUD-92210/92210.1. HUD or the DE Mortgagee must complete Form HUD-92210, Request for Credit Approval of Substitute Mortgagor, (Appendix 15) if the assumptor is creditworthy. Execution of the form does not formally release the seller from

personal liability on the mortgage not.

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1. Execution of Form HUD-92210.1, Approval of Purchaser and Release of Seller, (Appendix 7) releases the seller or former mortgagor from personal liability under the mortgage note.

2. (For mortgages restricted by the 1989 Act.) Mortgagees must automatically prepare the release (Form HUD 92210.1), thereby releasing the original owner when he or she sells by assumption to a creditworthy assumptor who executes an agreement to assume and pay the mortgage debt, thereby becoming the substitute mortgagor.

3. (For mortgages executed prior to December 15, 1989.)

a. Mortgagees must process all former owners' written requests for a formal release from liability (without regard to the date of the mortgage).

b. Mortgagees must grant a release from liability if the assumptor is creditworthy and executes a statement agreeing to assume and pay the mortgage debt.

NOTE: Under an assumption by an investor the mortgage must be first paid down to the appropriate loan-to-value ratio. (See HUD Handbook 4155.1 REV-4, Chapter 4.)

c. This category or release from liability (for mortgages executed prior to December 15, 1989) releases all who have personal liability on the mortgage note except the current (latest) owner who executed an agreement to pay the mortgage debt and become the substitute mortgagor.

NOTE: The following applies only to mortgages with a mortgagor application, dated on or after December 1, 1986, but before December 15, 1989. Mortgages resulting November 30, 1986, or earlier are not subject to the release from liability 5 years after assumption requirement. The

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12 and 24 month creditworthiness requirement  
for all mortgages in the above category  
expired on December 15, 1991.

d.If the assumptor executes a statement to become the substitute mortgage and pay the mortgage debt but no release from liability is obtained at the time of assumption, both the seller and assumptor are jointly liable for 5 years at which time, if the mortgage is current, the seller is automatically released.

e.If the buyer takes title subject to the mortgage and will not agree to execute a statement to become the substitute mortgagor and pay the mortgage debt, both seller and buyer remain liable for the term of the mortgage.

f.Each seller's 5-year liability runs individually from the date of each assumption. Liability does not terminate if the mortgage is not current at the end of the 5-year period.

g.If the requirements for a release are satisfied, the mortgagee must provide a written release upon request to the selling mortgagor.

6-7 NOTICE TO HOMEOWNER.

A.The Notice contained in Appendix 13 (A) applies to mortgages restricted by the 1990 Act. The Notice contained in Appendix 13(B) applies to mortgages restricted by the 1989 Act. The Notice contained in Appendix 14 applies to mortgages closed on or after December 1, 1986, but before December 15, 1989. The appropriate notice must be sent to:

1.All applicants for HUD-insured mortgages prior to the settlement transaction;

2.Upon inquiry by a seller or purchaser for information on HUD's creditworthiness review criteria, or on assumptions or release from personal liability procedures; and

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3.In the case of an Adjustable Rate Mortgage (ARM), the mortgagee must attach to the "Notice to Homeowner" a copy of the original Disclosure Statement that established the index, margin, and the change date.

6-8 FORMER MORTGAGORS.

A.Credit Bureau Reporting. Former mortgagors of defaulted mortgages are not to be reported to credit bureaus whether they remain legally liable for the mortgage debt or have been released from liability.

B.Notification Of Former Mortgagor. HUD considers it "prudent servicing" on the part of the mortgagee to notify the former mortgagor thereby providing the former owners the opportunity to salvage the mortgage and possibly avoid foreclosure.

C.Inquiry By Seller. Upon any inquiry by a seller of HUD's assumption requirements or upon learning that an assumption has occurred, the mortgagee must:

1.attempt to obtain the forwarding address of the former mortgagor (seller); and

2.advise the former mortgagor (seller) to update the mailing address as needed.

6-9 NOTIFICATION OF CHANGES.

A.The mortgagee must notify HUD within 15 days of any change of mortgagor, mortgagee, or servicer. Use Form-92080, Mortgage Record Change, for all Title II Single Family Mortgagees. (See Appendix 1.)

1.Coinsured Mortgages. Mortgagees must not use Form HUD-92080 to report mortgage record changes for co-insured mortgages. There is no longer a requirement to use a different form prior to the 60th scheduled payment.

2.Mortgagees must submit the notification of a change regardless of the manner of MIP payment.

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B.Failure by mortgagees to submit the notifications promptly and accurately will result in the following:

1.delay the processing of claims for mortgage insurance benefits;

2.under certain conditions, make it impossible for HUD to pay claims; and

3.may result in HUD taking administrative actions against mortgagees.

C. Some notifications will require the participation of more than one party. Responsibility for notifying HUD resides with the following entities:

1. Change of Mortgagor - The Holding mortgagee (or its servicer)
2. Change of Servicer - The Holding Mortgagee
3. Sale of Mortgage - The Selling Mortgagee

D. Notification Preparation Instructions. The forms contains preparation instructions. Send notifications to:

U. S. Department of Housing and Urban Development Insurance  
Systems Operation Sections 451 7th Street, SW, Room 2232  
Washington, DC 20410

E. HUD will not process incomplete or inaccurate forms. Instead, HUD will return the incomplete (or inaccurate) forms to the reporting entity for completion and correction.

6-10 CHANGE OF SERVICER.

A. General.

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1. When only servicing is transferred. The selling mortgagee notifies HUD within 15 days of the transfer on a Form HUD-92080 (See Appendix 1). (24 CFR 203.431 and 203.502(b))

a. Complete items 10 and 12 even though the purchasing mortgagee and the servicing mortgagee may be the same;

b. Submit only the original copy.

2. When the mortgagee pays MIP monthly. This notification assures the sending of future premium notices to the new servicer.

B. Notifications To Mortgagors. When servicing is transferred, the transferring servicer must notify or arrange to notify the mortgagor of the transfer of servicing (See Paragraph 1-7)).

If notification is not timely received by the mortgagor, neither the losing servicer nor the gaining servicer may hold the mortgagor responsible if the mortgagor's payments are not received in a timely manner. Mortgagors who have not been properly notified must not be assessed late charges and must not

be reported to credit bureaus for non-payment.

1.The notice must reach the mortgagor at least 10 days prior to the due date of the first payment to the new servicer (24 CFR 203.502(b)).

2.The notice must include:

a.name, address, and telephone number of the new servicer, including a toll-free number if the servicer has a number; and

b.any special instructions for handling payments during the conversion period.

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3.Mortgagees may not expect mortgagors to respond to any communication for the gaining servicer until at least 10 days after they would expect the mortgagor to have received the notice.

C.Responsibilities.

1.If the new servicer is not HUD approved, HUD will still hold the holding mortgagee responsible for all actions of the servicer.

2.If the servicer is HUD approved, HUD will hold the servicer equally responsible with the holding mortgagee.

NOTE:In accordance with 24 CFR 202.18, effective after January 10, 1994, all mortgagees who wish to service FHA-insured mortgages must be approved by the Secretary.

6-11 SALE OF THE MORTGAGE.

A.Rights And Obligations. When a mortgagee sells a mortgage, the purchasing mortgagee succeeds to all rights and becomes bound by all of the obligations of the seller under the contract for mortgage insurance, effective when Form-92080, accurately completed, is received by HUD. The selling mortgagee remains obligated to HUD in all ways until the change is reported.

B.Responsibilities/Penalties for Errors/Omissions.

NOTICE TO PURCHASING MORTGAGEES! HUD will hold purchasing mortgagees financially responsible for errors, omissions, and unresolved HUD review findings on the part of the selling mortgagee (or its agents), discovered after the transfer is

reported even though the errors or omissions took place before HUD received the report of the sale. (See Paragraph 10-26E.)

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C.Required Action By The Selling Mortgagee.

1.Notify HUD of the sale within 15 days of its occurrence (24 CFR 203.431). (See Appendix 1.)

2.Except as noted in subparagraph E below, submit a separate form for each transferred mortgage.

NOTE:DO NOT submit a "master" Form HUD-02080 with lists of mortgage-related data in a bulk sale. HUD will not accept such "master" forms.

3.The purchaser must sign Form HUD-92080.

4.Enter into item 12 the name of the entity that is the servicer after the transfer.

D.Magnetic Tape Notification. If a mortgagee typically transfers 50 or more mortgages a month, HUD encourages submitting the data from Form HUD-92080 on magnetic tape.

1.The data must be complete with respect to each mortgage (i.e., purchaser, seller and servicer information must be repeated for each mortgage) and must conform to HUD data input formats. (See Appendix 16 for formats and tape characteristics.)

2.HUD accepts no responsibility for errors or the correction of errors. HUD will return to the selling mortgagee at the mortgagee's expense, all tapes with error listings.

3.Mortgagees may submit corrected transactions on individual Forms HUD-92080 or on tape.

4.Mortgagees may obtain information about tape submissions from the U.S. Department of Housing and Urban Development, Insurance Operations Division, 451 Seventh Street, SW, Washington, DC 20410.

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E.MIP Reports. HUD sends to servicers a monthly information report of mortgages subject to periodic MIP (See Paragraph 2-6A1b). Thirty days after HUD processes Form HUD-90280, that case should be appended to the monthly report, regardless of the anniversary date of that mortgage. If 90 days after acquisition, the mortgage has not appeared on the monthly report, the new servicer should file the Form HUD-92080.

F.Mergers, Consolidations, and Acquisitions. When a mortgagee transfers an entire portfolio of holdings or of servicing as a result of a merger, consolidation or acquisition by another approved mortgagee, DO NOT submit a Form HUD-92080 to HUD. The notification required under the mortgagee approval rules suffice as notification to HUD of changes relating to all mortgages held or serviced by the losing mortgagee. Under these conditions, HUD assumes that all mortgages either held or serviced by the disappearing entity will now be held or serviced by the surviving one.

NOTE:HUD cannot pay claims for mortgage insurance benefits to surviving entities of mergers, consolidation, etc. Mortgagee approval is not transferable. Such surviving entities must apply for and obtain mortgagee approval.