

CHAPTER 8. HUD-APPROVED RELIEF PROVISIONS

8-1 FORBEARANCE RELIEF. Any of the relief measures discussed in this chapter may be used. Mortgagees are expected to make a concerted effort to avoid the foreclosure or assignment of HUD-insured mortgages, and to utilize acceptable methods of forbearance relief, wherever feasible and when:

- A. it is reasonable for the mortgagee to believe that the mortgagor can and will resume the mortgage payments;
- B. the forbearance plan entered into is made up of set "reasonable" monthly payments (i.e, one that has provided for specific monthly payments based on the mortgagor's ability to pay); and
- C. compliance with the terms of the forbearance plan will bring the mortgage completely current paid in full.

Mortgagees are expected to refrain from foreclosure where it is determined that the case may be salvaged through the use of one or more of these procedures.

NOTE: Failure to abide by these rules could result in curtailment of the claim.

The decision to grant forbearance is at the discretion of the mortgagee. However, repeated refusal to afford such relief under conditions in which it might have precluded foreclosure or the need to assign the mortgage to HUD might be considered cause for suspension or termination of the mortgagee's approval.

8-2 DELINQUENCY AND DEFAULT COUNSELING. Mortgagors who are one or more months behind in their mortgage payments must receive a list of HUD-approved housing counseling agencies in their state. This action is required by Section 169 of the Housing and Community Development Act of 1987.

The intent of the Act is to provide mortgagors with the opportunity to contact HUD-approved housing counseling agencies, obtain counseling advice and assistance, and become current on their monthly mortgage payments. Housing counseling agencies will advise and assist mortgagors during the period of delinquency and default, and also during the mortgage assignment process. Mortgagors who receive

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counseling early are much more likely to bring their mortgages

current, and bring them current within a smaller period of time.

There are no penalties in the Act. However, the mortgagor may request the court to stop foreclosure proceedings until the mortgagee provides the list and the mortgagor has had sufficient time to seek housing counseling. If foreclosure has occurred, the court may hold the mortgagee liable for losses sustained on account of the foreclosure.

8-3 FORBEARANCE PROCEDURES

- A. Withholding Of Foreclosure By Mortgagee. The mortgagee may hold the account in a default status and withhold taking action to acquire the property while continuing to work with the mortgagor.

All funds remitted by the mortgagor during this period shall be applied to the account in accordance with the terms of the mortgage. Since the date of default is thirty days after the date of the oldest unpaid installment (Paragraph 7-2E), the account can be carried in default for an extended period of time, if the mortgagor makes payments during the period of default.

NOTE:Each payment made by the mortgagor will advance the date of default since the payment must be applied to the oldest unpaid installment due.

B.Types Of Forbearance. Forbearance agreements are generally classified as informal, formal or special. Any delinquent mortgagor may be offered forbearance. Mortgagees have greater flexibility in the use of informal or formal forbearance agreements than for special forbearance agreements. Repayment plans and Forbearance agreements must always be realistic and based upon the mortgagor's ability to pay. (See Appendix 24 for examples of a formal forbearance agreement (repayment plan) and the two types of special forbearance agreements.)

1.Informal (Verbal) Forbearance. A verbal agreement is considered an informal forbearance agreement. This type of forbearance agreement may be used when the arrearage is small and/or the duration of the agreement will be three months or less.

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2.Formal Forbearance. If the agreement is in writing, it is considered a formal forbearance agreement. This is usually a short term (less than 18 months) repayment plan.

NOTE:Under 1 and 2 above, mortgagees may enter into a repayment agreement by increasing mortgage payments before the maturity date without prior HUD approval.

3.Special Forbearance. A specific type of a formal forbearance agreement is "special forbearance". Special forbearance is a servicing tool designed to give the mortgagor more relief than is possible with a regular repayment plan. Only if all the requirements of 24 CFR 203.614 have been met, can the forbearance agreement be considered as a "special forbearance". (See Paragraph 8-4).

C.Payment Of Insurance Claims. The mortgagee may receive unpaid mortgage note interest to a date specified in paragraph 8-4(D) if a valid special forbearance has been entered into. To this extent, the mortgagee may benefit in the payment of his insurance claim should the default not be curable and a conveyance claim result.

This contrasts with the payment of interest at the debenture rate from the date of default for cases where no special forbearance was utilized. The procedures for special forbearance are described in Paragraph 8-4.

8-4 SPECIAL FORBEARANCE PROCEDURE - (24 CFR 203.614).

A.HUD Approval Not Required. The mortgagee may grant special forbearance relief without HUD approval, provided that:

1.the mortgagor does not own other property subject to a FHA/HUD-insured mortgage, and

2.the default was caused by circumstances beyond the mortgagor's control.

3.the special forbearance agreement will not require increased payments before the original maturity date of the mortgage.

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B.HUD Approval Required. In no case shall a special forbearance be appropriate if the default was not due to circumstances beyond the mortgagor's control. Where this condition is met, but the circumstances of the case do not allow the mortgagee to enter into a special forbearance without prior permission, the Field Office manager may authorize the mortgagee to enter into a written special forbearance agreement. Mortgagees must request, in writing, authorization for special forbearance in the following instances:

1.the suspension or reduction of payments is for a period of more than 18 months.

2.the mortgagor owns other property subject to a HUD-insured mortgage.

3.the forbearance agreement shall require increased payments before the original maturity date of the mortgage.

In order for the local HUD Office to make a decision, the request for an approval of a special forbearance agreement must be accompanied by sufficient supporting documentation. Some examples of the type of supporting documentation normally needed for the local HUD Office to make its decision are as follows:

- 1.copy of the proposed forbearance agreement;
- 2.copy of the ledger history;
- 3.copy of the collection history;
- 4.copies of the HUD assignment letters, if applicable;
- 5.copies of any relevant financial documentation provided by the mortgagor;
- 6.copy of the management review checklist establishing mortgagor's eligibility;
- 7.signed copy of the "Special Forbearance Checklist" (See Appendix 23); and
- 8.any other documentation which will assist in establishing mortgagor's eligibility.

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For all claims where the mortgagee requested mortgage note interest reimbursement for a special forbearance agreement, the mortgagee must maintain in the claim review file all supporting documentation and the response from the local HUD office if applicable.

C.Content Of Written Forbearance Agreement. The requirements for special forbearance agreements that the mortgagee may enter into without HUD approval are very specific. The mortgagee has more flexibility in establishing the payment schedule for those special forbearance agreements that have been approved by HUD. To be considered valid, all special forbearance agreements must provide the mortgagor some additional relief. (See Appendix 24 for examples of special forbearance agreements.)

1.Agreements not requiring prior HUD approval. The written forbearance agreement shall provide for:

a.the suspension or reduction of payments for a period of not more than 18 months, or it may acknowledge that payments have already been suspended or reduced; and

NOTE:The fact that forbearance agreements are entered into because payments have been missed, does not automatically constitute compliance with this requirement. In order to meet this requirement, previously missed mortgage payments must be acknowledged in the written special forbearance agreement.

b.the resumption of regular mortgage payments after the period of reduced or suspended payments; and

c.the repayment of the total unpaid amount accruing prior to and during the period of reduced or suspended payments on or before a date extending beyond the original maturity date for a period no longer than the forbearance.

2.Agreements requiring prior HUD approval. The written agreement shall provide for:

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a.temporary relief for the mortgagor. To accomplish this relief, mortgagees may utilize a combination of periods of reduced and/or suspended payments as well as periods where the mortgagor may be required to make only his regular payment;

b.a realistic schedule of increased payments that will enable the mortgagor to bring his account current based upon his ability to pay;

c.the resumption of the mortgagor's regular payments after the expiration of the forbearance period; and

d.the payment of the total unpaid amount accruing prior to and during the period of forbearance on or before the maturity date of the mortgage or on or before a date subsequent to the maturity date that is approved by HUD.

D.Payment Of Insurance Claims - Special Forbearance.

When the mortgagee extends special forbearance pursuant to

Paragraph 8-4A or 8-4B, it will receive, as part of its insurance settlement on special forbearance agreements, unpaid mortgage interest, including all amounts accrued prior to the execution of the forbearance, computed to the earliest of the applicable dates described below:

- 1.the date of assignment of the mortgage to the Secretary;
- 2.the date of institution of foreclosure proceedings;
- 3.the date of the deed in lieu of foreclosure;
- 4.a date 90 days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or
- 5.such other date as the Field Office manager may approve, in writing, prior to the expiration of the 90-day period.

When circumstances beyond the mortgagee's control require an additional period of time, an extension

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of time may be requested from the local Field Office manager as long as the request is submitted prior to the expiration of the approved extension.

NOTE:If a claim for insurance benefits is filed as a result of the mortgagor's default under the agreement, a copy of the forbearance agreement must accompany the claim.

Any request of mortgage note interest on a claim for insurance benefits which is not fully supported, will not be honored. The "Special Forbearance Checklist" was developed as a tool to help mortgagees establish if the case meets the minimum requirements for special forbearance. A signed copy of the checklist must be submitted with the claim and a signed copy must be maintained with the claim review file.

8-5 FORBEARANCE RELIEF PROVISIONS FOR MILITARY PERSONNEL

A.Paragraphs 8-3 And 8-4. The forbearance relief provisions described in Paragraphs 8-3 and 8-4 are available to all mortgagors including military personnel. Use of written forbearance agreements with mortgagors who are in military service is encouraged.

B.HUD Regulations 24 CFR 203.345 and 203.346. These regulations provide for persons called to active military service two special relief measures which are as follows:

1.". . . the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and for 3 months thereafter any part of the monthly mortgage payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage . . . "

2."If at any time during default the mortgagor is a person in military service, as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure

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or acquire the property by other means as provided in this subpart."

Section 203.346 permits the mortgagee which commences foreclosure proceedings during the period of military service to voluntarily postpone completing them while the mortgagor is on active duty, regardless of whether application has been made to a court for a stay of foreclosure. Mortgagees may voluntarily withhold foreclosure with or without applying partial payments which advance the date of default.

C.The Soldiers' And Sailors' Civil Relief Act Of 1940 (The Act). This Act provides additional relief, but it does not amend the National Housing Act. HUD has always taken the view that it is not in a position to interpret all the various provisions of the Act as they may affect rights between mortgagees and mortgagors. Such interpretations should be obtained from the Department of Defense, the mortgagee's attorney, or are a matter for determination by the courts.

The provisions of the Act apply only to military personnel who had a mortgage obligation prior to enlistment or induction for an initial tour of duty or prior to recall after a break in service, and to reservists or National Guard members who have an existing contract obligation when subsequently ordered to active duty. Section 511 of the Act defines a person in the military service as all members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, and Public Health Officers detailed to the Army or Navy on active duty.

1.Protection During Foreclosure. Sections 520, 532 and 590

provide protections during foreclosure, but the Act does not relieve a mortgagor in military service of the obligation to make mortgage payments during the period of service, although a court may grant a stay of enforcement of the obligation.

The Act is not a bar to foreclosure, but foreclosure sales during the period of military service or within three months thereafter are not valid, under Section 532, unless: (1) the courts permit them because of their determination that military service has not materially affected the mortgagor's

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ability to pay the debt, or (2) they take place pursuant to a written agreement entered into after the commencement of active duty between the parties involved, as provided in Section 517 of the Act. Violations of Section 532 can result in a prison term up to one year or a fine up to \$1,000 or both.

2. Assignment Program Requirements for Mortgages Affected by the Act.

a. When Court Permission is Required for Assignment Letters. Whenever an affected mortgage is in default and the court's permission is needed to either initiate or complete foreclosure, the mortgagee must obtain such permission prior to sending the assignment letter 2 or 3. (This is to assure the ability to foreclose.) If the court permits the initiation and completion of foreclosure, foreclosure must be suspended until the assignment notices are sent. If the mortgagor requests assignment, the suspension must continue until the Field Office issues a final decision.

b. When Court Permission is Not Required for Assignment Letters. Under two conditions court permission is not required:

(1) If the account remains in default after six months from the completion of active duty and the mortgagor has not been approved for a "stay of foreclosure" to extend a repayment plan under Section 590 of the Act, a mortgagee may send the required assignment letters without seeking prior approval of the court to initiate or complete foreclosure.

(2) If a mortgagor has obtained a repayment plan under Section 590 but fails to keep the terms of the

court approved plan, assignment letters may be sent without court approval.

3.Reduction of Interest Rate. See Appendix 24(A) for discussion of reduction of mortgage interest rate provided by the Act, and its effect on claim payments.

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D.HUD-Approved Extensions Of Forbearance Are Not Required. Cases involving military personnel do not require HUD-approved extensions of forbearance for the period of military service which may extend beyond 18 months, but, in no event shall extend beyond 3 months after discharge.

8-6RECASTING A MORTGAGE (24 CFR 203.616 and 203.342). If a mortgagee and mortgagor are in mutual agreement, the mortgagee may grant relief to the mortgagor by modifying the amortization provisions of the mortgage to recast the total unpaid amount due under the mortgage to become the new principal balance due over the remaining term of the mortgage or a longer term as provided by 24 CFR 203.616. (See Paragraph 3-2 for detailed instructions as to how mortgages may be recast (modified)).

8-7SPECIAL RELIEF PROVISIONS - ASSIGNMENT OF DEFAULTED MORTGAGES TO THE SECRETARY. To give financially distressed mortgagors an opportunity to avoid foreclosure and retain their homes, mortgagees must abide by the following assignment program procedures. It is HUD's position that mortgagees may not commence foreclosure or acquisition of the property until the requirements of the assignment program have been met. (See Appendix 25, Assignment Program Schedule.)

NOTE:The requirement to accept assignments applies to all insured single family mortgages, including single family mortgages coinsured by HUD pursuant to Section 244 of the National Housing Act.

The eligibility and procedural requirements of this paragraph (Paragraph 8-7) apply to acceptance of assignments under the provisions of 24 CFR Section 203.650 through 203.666 of the regulations.

Assignment Requests for Coinsured Mortgages. Mortgages which have been coinsured under appropriate Sections of the National Housing Act are eligible for assignment consideration. Assignment processing procedures are not affected by the coinsurance agreement between HUD and an FHA-approved coinsurance mortgagee.

The only difference between a coinsured mortgage and any other mortgage is that if the coinsured claim is presented within the period of coinsurance (i.e., the first 60 months of the mortgage), an accounting adjustment is made in HUD

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Headquarters between a portion of the mortgagee's claim amount and the amount set aside in the mortgagee's Coinsurance Reserve Account.

A. Eligibility Criteria. The criteria listed below are the only criteria on which eligibility for assignment may be based. No other criteria may be considered and the facts relied upon in making a decision must be related specifically to these criteria.

1. The mortgagee must have indicated to the mortgagor its intention to foreclose the mortgage. The following requirements must be met in order to satisfy this criterion:

a. The mortgagee must be able to foreclose. The mortgagee is presumed to be able to foreclose unless, under applicable State and Federal law (including the bankruptcy acts), it is unable to begin the foreclosure process.

NOTE: If a mortgagor is involved in bankruptcy proceedings, the mortgage cannot be considered, accepted or rejected for assignment until the court has dismissed or completed the bankruptcy proceedings, or has exempted the mortgaged property from the bankruptcy proceeding.

Since a bankruptcy filing prohibits foreclosure action until the bankruptcy is dismissed or completed, or the mortgaged property is exempted from the bankruptcy proceeding, the following actions will be taken by Field Offices on assignment cases involving bankruptcy.

(1) If Letter #3 has been sent and the mortgagor filed bankruptcy before the time period for appeal to the Department elapsed, the assignment letters #2 or #3 must be sent again when the bankruptcy stay is lifted to afford the mortgagor the opportunity for an assignment eligibility review. If payments have been applied during the bankruptcy there would be a new date of default. The new default date

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would be 30 days after the due date of the oldest unpaid installment.

(2) If Letter #2 has been sent before the bankruptcy was filed and before the Field Office had announced a final decision, the case would be returned to the mortgagee for additional servicing until the mortgage became current or the bankruptcy stay was lifted. Upon lifting of the stay the mortgagee must refer the case back to the Field Office to be reopened and processed to a final decision if the mortgage is still at least 3 months due and unpaid. If during the bankruptcy the case later was brought current and later went into default, the assignment letters must be re-sent with the new date of default as the basis for eligibility under the circumstances criterion.

(3) Bankruptcy Payments Applied.

(a) If Letter #3 has been sent and the mortgagor files bankruptcy AFTER 20 days has expired and did not contact the local Field Office, the mortgagee may proceed directly to foreclosure after the stay is lifted without sending the HUD Letter 1, 2, or 3 again, if payments applied during the bankruptcy process do not bring the account less than 3 months due and unpaid.

(b) If Letter #3 has been sent and the mortgagor files bankruptcy AFTER 20 days has expired and did not contact the local Field Office and payments made through the process brings the account less than 3 months due and unpaid, the mortgagee loses its ability to foreclose and HUD letters 1, 2, and 3 must be re-sent as if it is a new default, once the stay has been lifted.

(4) If the bankruptcy is filed after the Field Office issued a final decision letter and the mortgage is neither reinstated nor becomes less than 3 months due and unpaid

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during the bankruptcy, then foreclosure may be

initiated without sending the assignment letters again. Of course, if the ability to foreclose is lost because the account became less than 3 months past due during the bankruptcy, assignment letters must be sent for the new default.

(5) If foreclosure was initiated by the mortgagee and was stopped on the day of the sale due to a bankruptcy declaration by the mortgagor, the mortgagee does not re-send the assignment letters and can proceed with the foreclosure after the bankruptcy stay is lifted.

(6) At any time that the intent to foreclose is withdrawn by either a formal or informal forbearance agreement with the mortgagor before HUD receives an assignment request, the assignment letters must be sent if the forbearance fails to bring the account current.

b. The servicing mortgagee must have made the decision to foreclose prior to sending HUD Letter #2 or 3 to the mortgagor. The investor approval must be obtained prior to Letter #2 or 3 being sent. (See Paragraph 7-11.)

(1) This approval or final decision to foreclose may be made by:

(a) the holder of the mortgage; or

(b) a servicing mortgagee authorized by the holding mortgagee to make the final decision to foreclose.

NOTE: Where a servicing mortgagee recommends to the holding mortgagee that foreclosure be approved, the holding mortgagee must give written approval for the servicing mortgagee to begin foreclosure proceedings. Blanket approval from the investor is acceptable.

Even though the servicing mortgagee has made a decision to foreclose, the servicer does not have to obtain the

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foreclosure approval until notifying the mortgagor of its decision to request or not request that HUD

accept an assignment; that is, prior to sending Notice #2 or #3. This approval must be sent with the assignment processing package to the local HUD Office.

(2)An approval to foreclose on an investor's mortgage may be conditioned upon HUD's rejection of an assignment request, but the authorization can include no other conditions.

c.The mortgagee must have notified the mortgagor of its intention to foreclose. The mortgagee must have given the mortgagor two separate, written notifications of his or her rights under the assignment program. The notices must have included the foreign language text and entire substance of the examples as shown in Appendix 26, 27, or 28.

2.After any partial payments that may have been accepted from the mortgagor have been applied to the mortgage, at least 3 full monthly installments must remain due and unpaid on the mortgage. This criterion is satisfied the day after the due date of the third completely unpaid installment.

NOTE:HUD Letter #1 can be sent as early as the 61st day of delinquency.

Example:If the full January, February and March installments are unpaid, three full installments are due and unpaid on the day after the March due date. But, if any part of the January installment has been paid, three full installments will not be due and unpaid unless the April installment is completely unpaid.

This criterion is satisfied when the amount due and unpaid equals or exceeds the total of 3 monthly installments.

NOTE:On mortgages insured under Section 235, this refers only to the mortgagor's share of the monthly installment.

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a.Any partial payments accepted by the mortgagee must be applied to the account prior to calculating the date of default.

b.Partial payments accepted on a delinquent account that is being reviewed by HUD for an assignment must be reported to the local Field Office as it could advance

the date of default.

c.If the date of default has already been established by the issuance of the HUD preliminary decision letter then the date of default would not be advanced.

d.If a preliminary review has not been issued and a partial payment is accepted which reduces the mortgage delinquency to the point where the mortgage is no longer three or more full monthly installments behind, the assignment request must be closed out by the local Field Office and returned to the mortgagee for further servicing.

NOTE:Refer to Chapter 7-9 for partial payment requirements.

Example:If a mortgagor who owes 5 monthly installments receives HUD Letter #3 and then pays the equivalent of 3 monthly installments (and the payment is accepted by the mortgagee), consideration for the assignment program cannot continue as the mortgage is no longer 3 full monthly installments due and unpaid on the mortgage.

At a later date, should the mortgage again become 3 full monthly installments delinquent, the mortgagor would be entitled to assignment consideration a second time. The date of default would be calculated in accordance with Paragraph 7-2E based on this delinquency (i.e., 30 days after the due date of the oldest unpaid installment). The mortgagee would then re-send the HUD assignment letters.

3.The property is the mortgagor's principal residence.

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Since mortgagees may not have enough information to decide this criteria and only HUD has the authority to waive this criteria, mortgagees must document the case file with respect to criteria.

4.The mortgagor does not own other property subject to a mortgage insured or held by HUD.

Since mortgagees may not have enough information to decide this criteria and only HUD has the authority to waive this criteria, mortgagees must document the case file with respect to criteria.

5.The default must have been caused by a circumstance or set of circumstances beyond the mortgagor's control which rendered the family unable to cure the delinquency within a reasonable time or make full mortgage payments.

NOTE:When defining the date of default as it relates to the circumstances of the mortgagor, the date of default as cited in Paragraph 8-7Ala(1) must be used.

Examples of qualifying reasons for default include, but are not limited to:

a.Curtailment of family income such as unemployment or underemployment; loss, reduction or delay in receipt of federal, state, municipal benefits (e.g., Social Security, Supplemental Security Income, Public Assistance, government pensions) or of private benefit payments (e.g., pensions, annuities, retirement plans); loss of support payments; or other loss of income due to divorce, illness or death.

b.Uninsured damage to the mortgaged property, affecting its livability and necessitating costly repairs.

c.Expenses related to death or illness in the mortgagor's household or of family members living outside the household which have significantly reduced the amount of income available to meet the mortgage payment.

d.Unanticipated increase in payments to mortgage escrow account to compensate for past underestimates of requirements.

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6.There is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after a temporary period of reduced or suspended payments, not exceeding 36 months, and will be able to pay the mortgage in full by its original maturity date extended, if necessary, by up to 10 years.

a.When evaluating this criterion, the mortgagee shall determine if the mortgagor's prospective income will be sufficient to cover the minimum payment which can be expected at the time full payments resume (a date no more than 36 months after the assignment is accepted).

This minimum payment is the amount needed to cover monthly escrow requirements and to amortize the outstanding principal balance and accrued delinquencies over the remaining term of the mortgage or over the original term extended by up to 10 years.

b. Future ability to pay is the key factor in evaluating this criterion (not present income or credit history). No applicant for assignment shall be determined ineligible based simply upon lack or type of income at the time the assignment request is processed. All present (if the mortgagor is employed at the time the assignment is being processed) and prospective sources of income must be considered when determining reasonable prospect for repayment, such as employment, welfare payments, pensions, insurance awards, child support and alimony payments, etc. Likewise, no mortgagor may be denied an assignment simply because his/her housing expense exceeds an arbitrary benchmark (e.g., 35 percent of net effective income). Each mortgagor must be evaluated according to his or her family's needs and lifestyle.

In evaluating this criterion, mortgagees shall consider the income and expenses reported by the mortgagor on Form HUD-92068F, Request for Financial Information (Appendix 29), as well as the factors listed below.

(1) Non-Cash Benefits Which Reduce Expenses. Some households receive services or non-cash benefits which reduce their cash

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outlay for living expenses and free more income for application to the mortgage payment.

Such benefits could include, but are not necessarily limited to, food stamps, free medical services (in the case of military or low income families), company-provided automobile, or receipt of food and clothing from family members living outside the household.

(2) Changes in Recurring Expenses. Monthly expenses may change in the future as age and composition of the household alters, short-term or installment loans are paid in full, members of the household transfer from school to full-time employment, or vice versa.

(3)Lifestyle. Each household distributes its income according to its own priority of needs. Some households prefer to hold housing expenses to a minimum and spend a larger proportion of their income on recreation or non-essential items while others will forego non-essentials and invest a high percentage of their income in a home.

The mortgagor's past spending patterns should be reviewed carefully. If the mortgagor has demonstrated the ability to make regular mortgage payments, even when those payments represented a large percentage of his or her income, the mortgagor should be given the benefit of the doubt when evaluating ability to resume full payments and pay in full by the maturity date.

(4)Employment, Earning Potential and Non-Wage Income.
Prospects for employment or salary increases will vary according to the job skills, work history and career ladder of the individual. For example, an individual hired in an intern or training slot could be reasonably certain of sizeable salary increases over the next few years, where an individual with skills

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limited to traditionally lower paid jobs often could not expect as much increase in income in the future.

Where a person is presently out of work and is not suffering from any disability that will prevent reemployment, and is seeking work, all doubts as to future employability should be resolved in his/her favor. In addition, it should be recognized that there are cases where non-wage income (such as public assistance, retirement, etc.) is sufficient to enable the mortgagor to pay the mortgage in full.

(5)Household Composition. Both the income and expenses of the household will change as members are added to or leave the household. Living expenses may decrease as teenage children leave home or increase as new members are added. Income may decrease as children reach the legal adult age

and Aid for Dependent Children or social security payments are terminated; conversely, income could increase as these members remain in the household and obtain full-time jobs.

(6)Income From a Third Party. In evaluating a mortgagor's ability to pay, the mortgagee may recognize income pledged to the mortgagor by a third party provided the third party can reasonably be expected to meet his/her pledge and the third party gives the mortgagee a written statement of the terms of his/her commitment. The statement need not be a formal or a legally binding document.

B.Mortgagee Decisions. Except in those cases discussed in Paragraph C3 below, the mortgagee or its servicer must decide prior to initiating foreclosure whether to request that HUD accept assignment of the mortgage in order to avoid the foreclosure. (See Paragraph 7-11A1.)

The mortgagee shall evaluate each of the eligibility criteria separately and shall document its conclusions. Since criteria 1 and 2 are prerequisites to foreclosure and since HUD has the authority to waive criteria 3 and

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4, the mortgagee shall decide whether to request an assignment based primarily upon its evaluation of criteria 5 and 6. The mortgagee should merely document its findings on criteria 3 and 4.

If the mortgagee determines that criteria 1, 2, 5 and 6 are met, the mortgagee must request that HUD accept an assignment and must proceed as directed in Paragraph C1 below.

If the mortgagee determines that criteria 5 or 6 are not met, the mortgagee shall proceed as directed in Paragraph C2 below.

C.Notice To Mortgagors And HUD. Except for cases discussed in Paragraph C(3) below, mortgagees must notify the mortgagor by sending HUD Letter #1 and must allow the mortgagor at least 7 calendar days to complete and return the Form HUD-92068F (Appendix 29). The mortgagee must also allow the mortgagor to submit any other information that might demonstrate his/her eligibility for assignment (also see Paragraph 7-7H).

NOTE:Mailing Requirements. The HUD assignment letters must be sent by regular mail service. If the mortgagee elects to use special mailing (i.e., Registered or

Certified) the costs must be absorbed by the mortgagee and the letters must also be sent by regular mail service.

The mandatory wording of HUD Letter #1 is given in Appendix 26. The local Field Office need not receive a copy of the HUD Letter #1 at this stage of processing.

Upon receipt of the Form HUD-92068F, the mortgagee must analyze the case file, determine if the case meets the criteria for assignment and must decide whether to request that HUD accept an assignment on that case.

Should the mortgagor fail to return the Form HUD-92068F requested in the mortgagee's HUD Letter #1, the mortgagee must evaluate the assignment criteria using all available information collected during previous contacts and shall send either HUD Letter #2 or 3, as appropriate.

1. When the mortgagee decides to request that HUD accept an assignment, the mortgagee must notify both the local HUD Field Office and the mortgagor. The notice to the mortgagor shall include the exact

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wording in its entirety as shown in HUD Letter #2 (Appendix 27).

The notification to the local Field Office shall be in the form of a letter requesting the assignment and shall be accompanied by the following:

a. a fully completed Form HUD-92206, Background Data on Request for Assignment of Mortgage to HUD, (Appendix 30);

b. a copy of Form HUD-92068F (Appendix 29) completed by the mortgagor;

NOTE: Should the mortgagor fail to complete Form HUD-92068-F, the mortgagee must include a statement on this form to that effect.

c. a copy of HUD Letters 1 and 2 to the mortgagor required by this paragraph and Paragraph C1 above;

d. a copy of the ledger record or payment record card reflecting the payment history for the 12 months prior to the oldest unpaid installment on the account or

since the indebtedness was assumed by the present mortgagor (if this date is more recent);

e.copies of all related collection records covering the same time period as in Paragraph d. above and documenting the efforts of the mortgagee's staff to collect the debt and the mortgagor's reactions to those efforts;

f.a copy of the Mortgage Insurance Certificate;

g.documentation that a comprehensive management review was completed (i.e., foreclosure review committee checklist) and mortgage holder's approval to foreclose; and a copy of the management review checksheet for the Assignmen Program process. (See Paragraph 7-11A4 NOTE.)

h.on Section 235 mortgages only, copies of all income verifications, the copies of the last two required recertifications (Forms HUD-93101 (Appendix 31) and 93101-A (Appendix 32)] and Form HUD-93114 (Appendix 33), Notice of

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Suspension, Termination or Reinstatement of Assistance, if applicable.

2.When the mortgagee decides not to request that HUD accept assignment, the mortgagor shall be notified of the decision by a letter including the mandatory exact wording in its entirety as shown in HUD Letter #3 of Appendix 28. The mandatory letter must:

a.include a statement that the mortgagee has decided to foreclose and has decided not to request that HUD accept the assignment;

b.state specific criterion (criteria) not met using the mandatory exact wording in Paragraph 8-7A5 and Paragraph 8-7A6;

c.state the facts and reasoning relied upon in reaching the decision that the criteria were not met;

d.describe the mortgagor's right to request that HUD accept the assignment;

e.give a brief, but clear, explanation of the effect of assignment;

f. specify the 15-day time limit within which the mortgagor must act; and

g. advise the mortgagor to seek legal or professional assistance if he/she does not understand his/her rights and obligations.

3. If a mortgagee initiates foreclosure without sending the mortgagor the notices required above, the Field Office shall indicate to the mortgagee that it has violated the assignment procedure and shall direct the mortgagee to stay the foreclosure action. Where necessary, the Field Office shall take steps to ensure that foreclosure does not proceed until the assignment processing is completed.

The mortgagee may foreclose without sending the mortgagor the letters discussed in Paragraphs 8-7C1 and 8-7C2 above only when one or more of the following circumstances exists; (The mortgagee's

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case file must clearly document that these conditions exist.)

a. the mortgaged property has been abandoned, or has been vacant for more than 60 days;

b. the mortgagor, after being clearly advised of the options available for relief, has clearly stated in writing that he/she has no intention of fulfilling his/her obligation under the mortgage; and/or

c. the mortgaged property is not the mortgagor's principal residence and it is occupied by tenants who are paying rent, but the rental income is not being applied to the mortgage debt.

d. the property is owned by a corporation or partnership.

4. Spanish Language Warning. The notices required by Paragraphs 8-7C1 and 8-7C2 shall contain a warning to Spanish-speaking mortgagors to have the notice translated. Mortgagees which are aware of other non-English speaking mortgagors should provide the warning in the native language of that mortgagor, in addition to the required Spanish language warning.

NOTE: These warnings are mandatory, must be placed at

the top of the letter and must be quoted verbatim.

The warnings to be used are as follows:

a. Appendix 26 - HUD Letter #1 Warning

(1) Spanish Translation of HUD Letter #1 Warning

ESTA NOTIFICACION ES DE SUMA IMPORTANCIA, PUES AFECTA SU DERECHO A CONTINUAR VIVIENDO EN SU CASA. SI NO COMPRENDE EL CONTENIDO, DE ESTA CARTA, OBTENGA UNA TRADUCCION INMEDIATAMENTE. SI USTED NO RESPONDE DENTRO DE SIETE (7) DIAS A PARTIR DE LA FECHA DE ESTA NOTIFICACION, USTED PUEDE PERDER SU CASA EN EL FUTURO.

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(2) English Translation of HUD Letter #1 Warning

THIS NOTICE IS EXTREMELY IMPORTANT BECAUSE IT AFFECTS YOUR RIGHT TO CONTINUE LIVING IN YOUR HOME. IF YOU DO NOT UNDERSTAND THE CONTENTS, OBTAIN A TRANSLATION IMMEDIATELY. IF YOU DO NOT RESPOND WITHIN SEVEN (7) DAYS OF THIS NOTICE, YOU COULD LOSE YOUR HOME IN THE FUTURE.

b. APPENDIX 27 - HUD Letter #2 Warning

(1) Spanish Translation of HUD Letter #2 Warning

ESTA NOTIFICACION ES DE SUMA IMPORTANCIA, PUES AFECTA SU DERECHO A CONTINUAR VIVIENDO EN SU CASA. SI NO COMPRENDE EL CONTENIDO, DE ESTA CARTA; OBTENGA UNA TRADUCCION INMEDIATAMENTE.

(2) English Translation of HUD Letter #2 Warning

THIS NOTICE IS EXTREMELY IMPORTANT BECAUSE IT AFFECTS YOUR RIGHT TO CONTINUE LIVING IN YOUR HOME. IF YOU DO NOT UNDERSTAND THE CONTENTS, OBTAIN A TRANSLATION IMMEDIATELY.

c. APPENDIX 28 - HUD Letter #3 Warning

(1) Spanish Translation of HUD Letter #3 Warning

ESTA NOTIFICACION ES DE SUMA IMPORTANCIA, PUES AFECTA SU DERECHO A CONTINUAR VIVIENDO EN SU CASA. SI NO COMPRENDE EL CONTENIDO DE ESTA CARTA OBTENGA UNA TRADUCCION INMEDIATAMENTE. SI USTED NO

RESPONDE A HUD AL () _____ DENTRO DE QUINCE
(15) DIAS A PARTIR DE LA FECHA DE ESTA
NOTIFICACION, USTED PUEDE PERDER SU CASA EN EL
FUTURO.

(2)English Translation of HUD Letter #3 Warning

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THIS NOTICE IS EXTREMELY IMPORTANT BECAUSE IT
AFFECTS YOUR RIGHT TO CONTINUE LIVING IN YOUR
HOME. IF YOU DO NOT UNDERSTAND THE CONTENTS,
OBTAIN A TRANSLATION IMMEDIATELY. IF YOU DO NOT
RESPOND TO HUD AT () _____ WITHIN FIFTEEN
(15) DAYS OF THE DATE OF THIS NOTICE, YOU COULD
LOSE YOUR HOME IN THE FUTURE.

5.Spanish Speaking Staff. Should there be a Spanish speaker
on the staff, it would be prudent to have that person proof
read all Spanish text after final typing. A typographical
error could occur when a foreign language is being copied by
someone who is not familiar with the language, which could
change the entire meaning of the warning.

If a member of the staff is fluent in Spanish, his/her
telephone number may be given to help the mortgagor in the
translation by adding to each HUD Letter Warning the
following sentence:

LA TRADUCCION LA PUEDE OBTENER LLAMANDO SR(A) _____ AL
TELEFONO ()_____.

English Translation:

THE TRANSLATION CAN BE OBTAINED BY CALLING _____
_____(name)_____ AT THIS TELEPHONE NUMBER () _____.

D.Time Limits. All time limits for the sending of required notices
(letters) and for mortgagor's required responses shall be deemed
to be calendar days, unless otherwise expressly stated.

NOTE:If the last day for sending any letter, performing any
act or making any response falls on a Saturday, Sunday
or legal holiday, the last day for sending such notice,
doing such act or making such response shall be the
next following regular working day.

Because of the time frames involved in the HUD
assignments, mortgagees must mail the HUD letters the
same day that they are dated in order to provide

sufficient time for the mortgagor to respond. This procedure is imperative when sending the HUD 3 Letter.

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E.HUD Field Office Processing. Once a mortgagee has notified a mortgagor that it intends to foreclose and does not intend to request that HUD accept an assignment of the mortgage, the mortgagor has 15 calendar days in which to request that HUD accept assignment of the mortgage. During this period of time the mortgagee must withhold foreclosure.

1.If the mortgagor responds within this time period, the local Field Office will:

a.direct the mortgagee to delay the initiation of foreclosure while it considers the mortgagor's request;

b.ask that the mortgagee provide the documentary information identified in Paragraph 8-7C1 within 15 calendar days of the request. This information must be accompanied by an appropriate transmittal letter explaining the reasoning underlying any "no" responses to eligibility criteria in Section D of HUD Form-92206. Of particular interest are the mortgagees comments as to whether (1) the default was caused by circumstances beyond the mortgagors control, and (2) there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within 3 years and be able to pay the mortgage in full by its maturity date.

c.determine if the mortgage is eligible for assignment after reviewing the documentation received from the mortgagee and the mortgagor as well as any other material that may be in the case file;

d.if all criteria in Paragraph 8-7A are met and/or should be waived (Paragraph 8-7A3 only) the mortgagee shall be instructed to assign the mortgage to HUD. The notification shall be in the form of an assignment acceptance letter;

e.if all criteria in Paragraph 8-7A are not met and/or should not be waived (Paragraph 8-7A3 only) the mortgagor shall be notified in writing of the final decision;

f.the mortgagee will be notified by copy of the final decision letter it may proceed with foreclosure; or

g.return the case to the mortgagee for further servicing where warranted.

2.Should the mortgagor fail to complete any specified action within the required time limit, the Field Office shall:

a.notify the mortgagee, in writing, that it may proceed with foreclosure; and

b.send the mortgagor a copy of the letter to the mortgagee.

3.In the event the local HUD Office makes the decision to reopen an assignment case for "good cause," mortgagees must comply with HUD's request to delay foreclosure. If a subsequent assignment or rejection takes place, the mortgagee will be reimbursed for any foreclosure expenses (reasonable and customary) it may be incurred. Mortgagees will be reimbursed for additional foreclosure costs and will be granted extensions, if appropriate.

F.General. Mortgagees must take or refrain from taking action as directed throughout Paragraph 8-7. Field Offices will conduct mortgage servicing reviews of a mortgagee's operation to assure that mortgagees comply with respect to HUD's assignment procedures (also see Paragraphs 1-2 and 8-7G).

NOTE:When a mortgagee demonstrates (1) a pattern of noncompliance with HUD's assignment program requirements, or (2) whenever a mortgagee refuses to abide by HUD's direction to assign, or (3) to refrain from foreclosure, acquisition, and/or dispossession pending HUD's determination as to whether an assignment will be accepted, the local Field Office shall recommend appropriate sanctions to the Deputy Assistant Secretary for Single Family Housing.

These sanctions may include, but not necessarily be limited to, the suspension or withdrawal of the mortgagee's approval to participate in HUD's mortgage insurance programs. Severity of penalty will be based on seriousness of the infraction (see 24 CFR 25.5).

The Office of Single Family Housing in Headquarters will review the recommendations made by

the local Field Office and either intervene to secure correction or prepare a recommendation to the Mortgagee Review Board (24 CFR 203.7(e)).

1. Return for Further Servicing. HUD may determine it is appropriate to return cases for further servicing. Some examples would be:

a.a violation of regulations that has materially caused or added to the default, such as: improper handling of tax escrows; Section 235 subsidy; violations of the regulations or guidelines pertaining to the return of partial payments, or

b.a violation such as: failure to have a management review; improper determination to foreclose; or permission to grant foreclosure by the mortgage holder (if the holder and the servicer are not one and the same), or

NOTE: under a and b above, the local Field Office must return the entire Assignment Request back to the mortgagee to be properly resubmitted and serviced before the package is considered for the Assignment Program process.

c.a violation of other requirements such as: incomplete documentation (i.e., an Assignment Request Package improperly or not signed by an authorizing official), failure to provide checklists or other required documentation to be submitted with the Assignment Request is incomplete.

NOTE: under c above, the local Field Office may return the entire Assignment Request back to the mortgagee to be properly resubmitted and serviced before the package is considered for the Assignment Program process.

Field Offices will specify the corrective action the mortgagee must take. Mortgagees may not institute foreclosure or issue new assignment letters until such corrective action has been completed.

2. Initiation of Foreclosure. After the date of notice that HUD is considering assignment,

mortgagees shall not initiate any action leading to foreclosure of the mortgage.

The only time it is proper for the mortgagee to initiate foreclosure is:

a.when the property has been abandoned or vacant for more than 60 days; or

b.after 20 days from the date of its notice to the mortgagor (i.e., the letter from the mortgagee notifying the mortgagor that it does not intend to ask HUD to consider the mortgage for assignment) and the mortgagee has not received notice from HUD that the mortgagor has contacted HUD and requested the Secretary to accept assignment of the mortgage (also see Paragraph 8-7A1b); or

c.when the mortgagee is advised by HUD that the mortgagor has failed to take a prescribed action within the time required; or

d.when the mortgagee is advised by HUD that it has made a final decision not to accept assignment of the mortgage; or

e.when the mortgagor, after being clearly advised of the options available for relief, has stated, in writing, that he/she has no intention of fulfilling his/her obligation under the mortgage; or

f.the mortgagor owns two or more properties that are occupied by tenants who are paying rent but, with respect to the mortgage under review, the rental income is not being applied to the mortgage payments.

G.Mortgagee Servicing. The adequacy or appropriateness of the mortgagee's servicing before the decision to foreclose is not a valid basis on which HUD can reject assignment of a mortgage. HUD will review the servicing of each case presented to it, and will evaluate the degree to which the mortgagee's actions have complied with the letter and spirit of the requirements imposed by the HUD regulations and this handbook.

Patterns of noncompliance will be handled as described in Paragraph 8-7F1 and Paragraph 1-2. If it appears

that the account might be brought current if the mortgagor is afforded additional relief which does not impose an undue burden on the mortgagee, HUD may suggest that the mortgagee grant that additional relief before a final decision is made to accept or reject the assignment.

Mortgagees are not required to accept such requests from HUD and are free to propose alternative forms of additional relief. When a mortgagee disagrees that it is appropriate for it to grant additional relief, the reason for that disagreement should be pointed out by the mortgagee when it announces its decision to HUD.

When the mortgagee agrees to HUD's request and the additional relief provided enables the mortgagor to reinstate the account, any subsequent default must be treated as a new default. Once reinstatement has occurred, the mortgagee must comply with the assignment program requirements to the same extent as if the case had never been in default before.

If the additional relief fails to bring about the reinstatement of the mortgage, the mortgagee shall so advise HUD and HUD shall reopen the assignment case. The mortgagee need not send any additional notifications to the mortgagor but must withhold from foreclosing until notified by HUD that a final decision has been made not to accept assignment of the mortgage.

HUD shall resume processing at the point at which it was interrupted for consideration of additional relief by the mortgagee. Examples of reopening cases at various stages of processing are given below:

Example #1

Scenario: HUD had notified the mortgagor of a preliminary negative decision and had given him/her 15 days to ask for a conference. Before the conference was requested or held, the mortgagor and the mortgagee agreed on a payment plan. Subsequently the payment plan was broken. Therefore, the mortgagee would do the following:

Action Required: The mortgagee would notify the local Field Office that the payment plan had been broken.

The Field Office would then send another preliminary review letter to the mortgagor and give him/her another 15 days to request a conference.

Example #2

Scenario:Using the scenario in Example #1, if HUD had held a conference but had not announced a final decision prior to returning the case to the mortgagee and the additional relief failed to reinstate the account, the mortgagee would do the following:

Action Required: The mortgagee would notify the local Field Office that the payment plan had been broken. The Field Office would then once again review the case file and announce a final decision.

If all criteria had been met (or waived), HUD would then accept the assignment.

If one or more of the criteria had not been met (or waived), HUD would then reject the assignment, convey its findings and reasoning, in writing, to the mortgagor and authorize the mortgagee to proceed with the foreclosure.

Example #3

Scenario:Using the scenario in Example #1, if HUD had announced a final decision before the mortgagee agreed to give additional relief, then the mortgagee should do the following:

Action Required: The mortgagee would notify the local Field Office that the payment plan had been broken. The final decision made previously by HUD would stand.

If HUD's previous decision was to reject the assignment, the mortgagee would only need to notify HUD that the payment plan had been broken and that the mortgagee was proceeding with the foreclosure action. No additional HUD processing would be necessary.

If HUD's previous decision was to accept the assignment, HUD would then accept the assignment.

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H.Assigning Mortgages. Within 30 days after the date of HUD's written agreement to accept the assignment, file the mortgage

assignment for record (24 CFR 203.350(e)).

Credit Bureau Reporting. Mortgagees must not report any case to a credit reporting agency where HUD determines that the case is eligible for mortgage assignment.

1. On the date the assignment is filed for record,

a. submit the title evidence to the local HUD Office, Attention: Field Counsel (24 CFR 203.351).

b. notify the Secretary of the filing by submitting the originals of Parts A and B of Form HUD-27011 to HUD Headquarters and a copy of Part A and B and the original of Part D to the local HUD Office, Attention: Single Family Loan Management Branch (24 CFR 203.351).

2. Follow outstanding instructions for preparation and submission of assignment claims. For your information, a copy of the assignment acceptance letter is included in Appendix 34.

3. Unpaid interest, accrued at the mortgage rate from the date of the last completely paid installment to the date the assignment is recorded, will be included in the mortgagee's claim unless more than 30 days have elapsed between the date of HUD's authorization to assign (Appendix 34) and the date the assignment is recorded.

8-8ASSIGNMENT OF DEFAULTED MORTGAGES ON PROPERTIES LOCATED IN INDIAN RESERVATIONS (National Housing Act, Section 248; (24 CFR 203.350, 203.604). HUD will accept assignment of any mortgage insured pursuant to Section 248 of the National Housing Act if the mortgagee submits documentation of the following conditions:

A. the mortgage has been in default for more than 90 days;

B. the mortgagee has had a face-to-face interview with the mortgagor, or made a reasonable effort to arrange such a meeting, before three (3) full monthly installments due on the mortgage are unpaid (i.e., if the default occurred in a repayment plan arranged other than in a personal interview, the mortgagee has had a face-to-face

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interview with the mortgagor, or made a reasonable effort to arrange such a meeting within 30 days after such default, and at least 30 days before requesting assignment);

1. a face-to-face meeting is not required if:

a.the mortgagor does not reside in the mortgaged property; or,

b.the mortgagor has clearly indicated that he or she will not cooperate in the interview; or,

c.the mortgagee has entered into a repayment plan consistent with the mortgagor's circumstances to bring the mortgage current, thus making a meeting unnecessary, and payments under that agreement are current; or,

d.a reasonable effort to arrange a meeting has not succeeded.

2.a reasonable effort to arrange a face-to-face meeting shall consist at a minimum of all of the following:

a.one telephone call to the mortgagor for the purpose of trying to arrange the interview;

b.one letter sent by certified mail to the mortgagor for the purpose of trying to arrange the interview;

c.one trip by the mortgagee, its servicer, or a branch office of either, to see the mortgagor at the mortgaged property for the purpose of trying to arrange the interview; and

d.the mortgagee may appoint an agent to perform its responsibilities under this subsection.

C.the mortgagee has also:

1.informed the mortgagor that HUD may make information regarding the status and payment history of the mortgagor's loan available to local credit bureaus and prospective creditors;

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2.informed the mortgagor of any other available assistance;

3.notified the mortgagor that if the mortgage remains in default for more than 90 days, the mortgagee will request HUD to accept assignment of the mortgage;

4.notified the mortgagor of the qualifications for forbearance relief from the mortgagee, if any, and that forbearance

relief may be available from HUD if the mortgage is assigned; and

5.informed the mortgagor of the names and addresses of HUD officials to whom further communications may be addressed.

8-9AUTOMATIC ASSIGNMENT OF MORTGAGES PURSUANT TO SECTION 221(g)(4) OF THE NATIONAL HOUSING ACT.

Pursuant to Section 221(g)(4) of the National Housing Act, as amended, mortgagees have the option to assign (transfer) single family mortgages insured under Section 221 when such are not in default at the expiration of the twentieth anniversary of the date of the mortgage was endorsed for insurance. Such mortgages are easily identified by the 3 digit suffix code at the end of the FHA case number. Suffix codes are: 221, 321, 521, 721, 224, 324, 524, 223, 323, 523, 205, 305, 505, 204, 304, 504, 273, 373, 573, or 773 and may also be identified with (d)(2), (h), (i) or (e) after the suffix code (i.e., 221(d)(2), 321(h), etc.). Mortgagees have one year from this anniversary date to simultaneously file for record a mortgage assignment and submit a single family insurance claim. No extension of time will be granted for exercising this option. (For further claim instructions, see HUD Handbook 4330.4, FHA Single Family Insurance Claims.) Mortgages which are ineligible for this option are: (1) those where a commitment was issued on or after December 1, 1983; and (2) where GNMA was or is the holding mortgagee on or after April 1, 1984. (See 24 CFR 221.255, and the Federal Register, Volume 49, No. 98, May 18, 1984, Rules and Regulations, page 21048.) Mortgagees shall discontinue sending HUD the Notice of Intent to Assign 221(g)(4) mortgages.

A.Mortgagees who exercise this option must complete the following actions prior to the (expected) filing date which is the date that the mortgagee simultaneously files the mortgage assignment in the Secretary's name

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with the local recording authority and submits the claim to HUD:

1.Send APPENDIX 35 to the mortgagor at least 60 days prior to the filing date. (See Appendix 35.)

2.Send APPENDIX 36 to the mortgagor confirming that the mortgage will be assigned to HUD. Appendix 53 must be sent by the earliest of the following two dates: at least 15 days prior to the filing date or at least 15 days prior to the first mortgage payment due HUD which will occur after the filing date. (See Appendix 36.)

3.Notify, at least 15 days prior to the filing date, all third

parties, such as, taxing authorities and the insurance carriers for the hazard, flood, life, health and disability coverage, that the mortgagor will be responsible for the payment of tax bills and insurance premiums. HUD WILL NOT ESCROW FOR ANY ITEM FOR A 221(g)(4) MORTGAGE.

B.Hazard/Flood Insurance. HUD requires the mortgagor to have adequate hazard and flood insurance coverage even though HUD does not escrow for the premium, therefore, to assure that the initial coverage is in effect, the mortgagee must follow these specific instructions.

NOTE:DO NOT CANCEL THE HAZARD OR FLOOD INSURANCE CONTRACT UNDER ANY CIRCUMSTANCE.

1.Instruct the hazard and flood insurance carrier to substitute as the beneficiary in the mortgagee clause the following: "Secretary of Housing and Urban Development, his successors and assigns, in care of (insert the name and address of local HUD Office)".

2.Ensure that the hazard or flood insurance contract will be in effect for a period of at least 90 days beyond the filing date. If less than 90 days, the mortgagee must contact the insurance carrier and request a renewal of the insurance contract. See 3 (below) for further instructions.

3.Pay from the escrow account any bill that represents an escrow item and which is received on or by the filing date. These payments must be posted to the mortgage account prior to the completion of the claim (Form HUD-27011). Any bill which is received

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after the filing date must be sent to the mortgagor for payment.

4.Send the insurance contract or policy (original) to the local HUD Office per outstanding claim procedures.

5.Mortgagees must adhere to the outstanding claim procedures when completing the claim package (copy of the Mortgage Assignment Document which is filed for recordation, Form HUD-27011 and required documentation) to HUD. This package must be submitted to HUD in its entirety on the filing date.

6.Send a check to the mortgagor which represents the total amount of the escrow account. The check should be received by the mortgagor no later than 10 days after the claim is submitted.

C.The mortgagee must ensure that the mortgage assignment document which is filed for record is sent to the local HUD Office after recordation.

Also, the title evidence which is required by the claim instructions must be a part of the claim package which is sent to the local HUD Office. DO NOT SEND THE TITLE EVIDENCE SEPARATELY. The title Approval Letter which is sent to the mortgagee by local office must be incorporated into the claim audit file.

D.Mortgagees who elect to continue servicing mortgages insured under Section 221(g)(4) after the 20th anniversary date of endorsement must follow the normal assignment procedures if the account goes into default.

Mortgages which go into default before the 20th anniversary date must also be given the normal assignment procedures.

8-10FORBEARANCE RELIEF THROUGH REAPPLICATION OF PREPAYMENTS. A mortgagor who has made partial prepayments to principal may, at some future time, require forbearance relief. In these situations, the mortgagee may permit a reapplication of the prepaid sums to monthly payments to prevent a delinquency. The mortgagee should ensure that, when regular monthly payments are resumed, the remaining outstanding principal balance is one which will be completely amortized over the remaining life of the mortgage. This determination can be made from the Outstanding Principal Balance Tables in Form 2025, Amortization Insurance Premium

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and Outstanding Principal Balance Tables, copies of which are available upon request from a local HUD Field Office.

8-11FORBEARANCE AND RECASTING - MORTGAGE INSURANCE PREMIUMS (MIP). Whether the premium is paid in a lump sum at closing (one time MIP) or paid periodically (monthly MIP), the National Housing Act requires that the amount of MIP be based on the scheduled unpaid principal balances without taking into consideration delinquencies or prepayments.

NOTE:Mortgage insurance premiums are not affected by the mortgagee voluntarily withholding foreclosure, entering into a special forbearance agreement, or recasting a mortgage.

Premium billings from HUD will continue to be based on the original terms of the mortgage without modification and will cease on the original maturity date of the mortgage.

When the mortgage is recast to extend its term or when a

forbearance agreement is entered into which provides for mortgage payments coming due after the original maturity date of the mortgage, there will be a period during which no MIP premiums are due from the mortgagor. However, the contract of mortgage insurance will remain in full force until the mortgage has been paid-in-full in accordance with the terms of the forbearance agreement. (See 24 CFR 203.261.)

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