

CHAPTER 9. GENERAL PROCESSING GUIDELINES

9-1 Returning Cases to Lenders for Additional Servicing

- A. When HUD determines that a lender violated regulations which contributed to the borrower's default, HUD SHOULD RETURN the case to the lender using the Letter Returning Case to Lender (Appendix A, ASGN-20) for correction of the violation and further servicing. The Field Office must inform the borrower in writing that his or her case is being returned to the lender (send a copy of Appendix A, ASGN-20); that the lender may not institute foreclosure until HUD has considered his or her application for assignment; and that no additional fees and/or costs will be assessed to the borrower as a result of this action.
1. These violations might include improper handling of tax escrows, Section 235 subsidy, or partial payments. Use block labeled "Other" of Appendix A, ASGN-20 to list these items.
 2. LENDER MAY NOT INSTITUTE FORECLOSURE OR ISSUE ANY NEW ASSIGNMENT LETTERS UNTIL THEY COMPLETE THE CORRECTIVE ACTION.
 3. HUD cannot accept an assignment where servicing deficiencies contributed to the borrower's default, unless the lender fails to correct the deficiencies.
 4. The Field Office should review the resubmission of these cases to ensure that the borrowers received the benefit of proper servicing from the lender.
- B. Requesting additional servicing. The Field Office may ask a lender to reconsider its decision to foreclose and instead grant additional relief any time before a final decision is announced.

This direction is particularly appropriate where facts not available to the lender come to HUD's attention.

- C. When a lender agrees to continue to service the mortgage and provide additional relief, the Field Office's letter returning the case must specify the reasons for returning the case to the lender, the type of relief to be provided, and the action the lender must take if the relief is not successful (to be entered in the "Other" block of Appendix A, ASGN-20).
- D. When the lender refuses to grant the additional relief HUD requested, the Field Office must continue to process the assignment request until a final decision is made.
- E. The lender must advise the Field Office if additional relief by the lender fails to bring the mortgage account current.

The lender must resubmit the case for continued assignment evaluation and withhold foreclosure action until HUD notifies the

9-103/95

4330.2 REV-2

lender of a final decision. Lender must send a cover letter to the Field Office explaining the reason for returning the case. Lender must also attach documentation indicating the servicing activities entered into with the borrower such as a forbearance agreement or refinance, etc. Send a copy of the cover letter to the borrower.

- F. If a borrower reinstates the mortgage (i.e. pays in full to the lender) while it is being considered for assignment, the lender must immediately notify the Field Office. The Field Office should close out the case and return it to the lender for further servicing using Appendix A, ASGN-20.

The Field Office should instruct the lender to resend the Borrower Information Packet, if the mortgage goes into default again.

G.If additional relief fails to bring the account current and the lender resubmits the case to HUD, the Field Office must reopen the case and complete the assignment evaluation from the point at which processing stopped when the case was returned to the lender for further servicing.

9-2 Time Limits

A.All time limits for completing specific actions are stated in calendar days.

B.If the last day for completing a specific action falls on a Saturday, Sunday, or legal holiday, the last day for completing that act is the next regular work day.

C.Borrowers must make telephone responses on or before the cut-off date.

D.Borrower's written responses must be postmarked on or before the cut-off date.

E.The borrower loses any rights for further consideration by HUD if responses are not made within the required time frames, unless a "good cause" appeal is accepted. The case must be closed out in the Automated Assignment Processing System each time a time frame is missed. The case must be reopened if a "good cause" appeal is accepted.

9-3 Good Cause

A.If a borrower misses any response time set forth in this handbook, he or she will forfeit his or her right to assignment unless a "good cause" explanation can be demonstrated. The borrower must provide documentation of his or her reasons for late or non-response.

03/959-2

4330.2 REV-2

B.Following are examples of acceptable evidence which may be used to demonstrate a "good cause". THE EXAMPLES MAY NOT APPLY TO ALL "GOOD CAUSE" CASES.

1.During a notice period, a borrower or co-borrower has a medical emergency that contributed to the borrower's failure to respond.

Sample evidence - Written evidence of a hospital stay

2.The borrower states that the request from the lender was not received.

Sample evidence - Documentation that the borrower has a history of not receiving mail, or that others in the borrower's neighborhood were not receiving mail

3.The borrower states that the request from the lender or HUD was not timely received.

Sample evidence - Copies of envelope postmark date and copy of the letter indicating the date it was prepared

4.The borrower received wrong, incomplete, or misleading information from the lender, HUD, or another party.

Sample evidence - Copies of the misleading information

5.The borrower was attempting in good faith to resolve the underlying default by working on another reasonable plan with the lender or other party which fell through, e.g., forbearance, refinance, pre-foreclosure sale (applies only if rejected for pre-foreclosure sale), trying to borrow money or waiting for a check.

Sample evidence - copy of loan application, proof that additional funds were expected, (e.g. lawsuit, insurance benefits), copy of pre-foreclosure sale rejection letter

6.The borrower did not understand what actions to take or what was required under the program.

Sample evidence - Documentation that a situation exists

which limits the borrower's ability to comprehend the necessary requirements (e.g. illiteracy, mentally ill, visually challenged, etc.)

C. Following are underlying assumptions relating to "good cause" cases:

1. The borrower is assumed to have received any letter HUD or the lender mails. Exceptions are when the U. S. Postal Service returns a letter as undelivered; when the U. S. Postal Service cannot deliver mail due to natural disaster; lost mail; or if the borrower can otherwise document non-receipt of mail (see paragraph 9-3B2 and B3).

9-303/95

4330.2 REV-2

2. In all "good cause" appeals, HUD or the lender must resolve any doubt in the borrower's favor.

D. If the borrower demonstrates a "good cause" for failing to respond timely to the Field Office or the lender, the Field Office must:

1. Request the lender to delay foreclosure (if the case is with the Field Office). The Field Office should advise the lender that appropriate extensions will be granted if necessary, so that the lender may initiate foreclosure in a timely manner (refer to regulation 203.355).

2. Reopen the case in the Automated Assignment Processing System and resume processing from the point where processing stopped prior to the missed deadline.

3. If the next step in the process requires the borrower to submit documents or request an appeal conference, the Field Office or lender must give the borrower 30 days to provide the missing documents and 15 days in which to request a conference.

4. If the lender decides not to delay foreclosure for the purpose of a "good cause" appeal once the initial time limits have expired, these cases should take priority over the processing of regular assignment requests in the Field Office.

9-4 Communication With Borrowers

A. Record of Communication. It is essential that complete and accurate communication records be maintained between Field Offices, lenders, and borrowers.

1.If the communication is in writing, copies of the correspondence must be maintained in the borrower's file.

2.Document on Assignment Request Case History Sheet, form HUD-92219, all conversations and telephone calls, both incoming and outgoing. The Field Office should maintain the form in each case file. Lenders may document such conversations, telephone calls, etc. as part of their servicing records.

B.Establishment of a Control Point. To the extent possible, channel incoming telephone calls relating to the assignment programs to a single control point. The employee handling the incoming calls must be able to:

1.Answer basic questions about the assignment procedures.

2.Refer borrowers to their lender, the Field Office that has jurisdiction over their mortgage, or housing counseling agency, as appropriate.

03/959-4

4330.2 REV-2

3.Respond to inquiries concerning the processing status of any assignment request.

C.Long Distance Telephone Calls. While Field Offices do NOT accept collect telephone calls, Field Offices should immediately return calls to borrowers who would otherwise incur long-distance telephone costs. Lenders must ensure that borrowers are aware of their toll-free telephone number.

9-5Date of Default. Accurate calculation of the date of default is CRITICAL. Double check all calculations.

A.Calculating the date of default

1.The date of default is calculated by determining the due date of the oldest unpaid installment after all partial payments have been applied.

The date of default is thirty (30) days after the due date of the oldest unpaid installment. See paragraph 3-5B2 for a calculation example.

2.IN SCENARIO TWO AND THREE, INCORRECT CALCULATION OF THE DEFAULT DATE BY THE LENDER REQUIRES THAT THE FIELD OFFICE ISSUE APPENDIX A, ASGN-20 TO RETURN THE CASE TO THE LENDER TO CORRECT THE DATE OF DEFAULT AND REISSUE THE LENDER ASSIGNMENT PACKET.

B.Establishing the date of default. Generally, the date of default is established at the time the Lender Assignment Packet is issued. See paragraph 9-5D below for guidance if lender accepts payments after the Lender Assignment packet is issued.

C.Including the date of default in correspondence. The date of default should be included in any request for information and negative decision letters, both as part of the subject line and in the body of the letter.

MANDATORY language for the body of the letter is:

"The oldest unpaid installment on your mortgage is month/day/year; therefore, we calculated your date of default as month/day/year."

D.Advancing the date of default. Once the date of default is established (by issuance of the Lender Assignment Packet. See Appendix A, ASGN-2), if the lender accepts additional payments the lender must apply them to the mortgage and advance the date of default (see paragraph 9-5D2 below) for the purpose of evaluating the "circumstances" criterion (Criterion Five):

1.If the lender accepted partial payments which reduced the mortgage delinquency to less than three (3) full months, the case must be closed because the mortgage no longer meets the criterion to be able to foreclose.

9-503/95

4330.2 REV-2

a.If the borrower again falls behind three (3) or more months, the lender must issue a new Lender Assignment Packet.

b.The lender must consider the borrower's subsequent assignment request as a new request, NOT as a reopened case.

c.When the lender issues its new Lender Assignment Packet, the newly established date of default MUST reflect the additional payments the borrower made.

2.If the lender accepts partial payments which do not reduce the mortgage delinquency to less than three (3) full months, the mortgage remains eligible for assignment consideration (lender is still able to foreclose). The lender must advance the date of default by completing a new Date of Default Analysis, form HUD-92212, and consider the "circumstances" criterion using the newly established date of default as a point of reference.

3.If the case is with the Field Office for processing and the lender accepts partial payments which reduce the delinquency to less than three (3) months, the lender must immediately notify the Field Office to return the case for further servicing (see paragraphs 9-5D1 a through c above).

If the Field Office returns an assignment request to the lender for further servicing because of reinstatement, and the borrower subsequently falls behind by three (3) or more months, the lender must issue a new Borrower Information Packet.

9-6Verification of FHA-insurance. At the start of review for all scenarios, the Field Office must verify the FHA case number and property address. This verification will confirm that FHA-insurance is in effect. Apply the following procedures:

A.A43 system

1.Access the E01 and E08 screens to verify the FHA case number and property address.

2.Determine the status of the FHA case number from the following codes: A = Active, C = Claim Filed, T = Insurance Terminated.

3.If the case number is active (Status Code A) and there is an address match, or if the case number is active but the address cannot be confirmed (for the older cases where the Single Family Insurance System (SFIS) has no address on file), the Field Office must continue processing.

4.If the case is less than 12 months old, there is a possibility that the case could be waiting for endorsement.

a.Access the H04, H07, and the H11 screens in A43.

03/959-6

4330.2 REV-2

b.If the case number indicates that a premium has been paid, but the case has not yet been endorsed, have the Mortgage Credit section confirm if the case is endorsable.

c.If the case is endorsable (per Mortgage Credit), the case may be reviewed for assignment.

5.If the insurance was terminated (Status Code T), determine the date of termination through the K03 screen in the SFIS.

B.The Field Office must not process a case in any of the following circumstances:

- 1.The FHA case number and property address do not match
- 2.The FHA case number is not valid
- 3.HUD paid an insurance claim on the case number
- 4.The mortgage insurance has been terminated
- 5.The case is not endorsable as determined by Mortgage Credit (for example, lender neglects to submit the case to the Field Office to be endorsed).

NOTE:The lender may not foreclose or file an insurance claim until these problems are resolved.

C.If any of the circumstances in paragraph 9-6B, above apply, the Field Office must:

- 1.Inform the lender of the problem by issuing Appendix A, ASGN-7 which gives the lender seven (7) days to provide the Field Office with a copy of the security instruments.

- 2.Forward the security instruments and copy of the Mortgage Insurance Certificate (MIC) to: Office of Mortgage Insurance Accounting and Services, Room 2232 for the mortgage to be entered into the A43 system.

9-7 Inspection for Damage

A.When a mortgage is assigned to HUD, the property must be undamaged by fire (except as otherwise provided in 24 CFR 203.379(b)), flood, earthquake, tornado (windstorm) or boiler explosion (for condominium units only), unless the Field Office has otherwise approved.

B.BEFORE assignment of a mortgage, Field Offices must independently try to verify that the property is not damaged.

- 1.The Field Office can use one of three methods:

- a.Contact the lender

- b.Call the borrower

9-703/95

4330.2 REV-2

c.At the appeal conference, obtain a statement verifying that the property is undamaged

- 2.The Field Office must promptly inspect the property if there is reason to believe the property is damaged. Document all

efforts to determine the condition of property on Assignment Request Case History Sheet, form HUD-92219.

C.If the property is damaged, the Field Office must advise the lender to repair the damage unless written approval is obtained from the Field Office.

D.If the Field Office will approve the mortgage to be assigned in an "as-is" condition (without the property being repaired), then the Field Office must provide a letter to the lender confirming the approval.

1.This approval shall identify the type(s) of damage and HUD's estimate of the cost of repairs. The lender must attach a copy of this approval to the claim.

2.The Field Office must maintain a copy of this approval in the case file.

NOTE:With rare exception, it is always in the best interest of all parties for repairs to be completed prior to the case being assigned. The Field Office must provide the lender with a reasonable extension of time to assign the mortgage so that the repairs may be completed.

9-8 Assignment Processing and Bankruptcy

A.The lender must send the Borrower Information Packet and the Lender Assignment Packet to the borrower.

1.When the borrower applies to the lender for assignment consideration, the lender must determine if a bankruptcy petition has been filed and, if so, whether the lender has filed a Proof of Claim.

2.If a Chapter 13 petition has been filed and a payment plan is in effect, the lender must obtain a copy of the plan in order to ensure that the debt to the lender is in the plan and to determine what other debts the borrower has. The plan is important to evaluate assignment processing Criterion Six - "reasonable prospects."

3.If the borrower does not apply to the lender, but applies directly to HUD, the lender must still obtain a copy of the bankruptcy plan to provide to the Field Office in the Assignment Review Packet (see paragraph 4-1B1).

B.If the Field Office approves the lender's recommendation to accept the assignment or if the Field Office processes the case and determines that the case is eligible for assignment, then:

1.The Field Office must notify the lender of the "conditional approval" using the Bankruptcy Conditional Approval Letter to Lender (Appendix A, ASGN-21).

The lender will be asked to have a motion filed within 10 days requesting that the bankruptcy court lift the automatic stay to allow the lender, its successors and assigns, including HUD, to exercise any rights granted to it by the loan documents with respect to the property, including, but not limited to, the initiation and completion of a foreclosure sale of the property. The motion may be a joint motion or a motion based on a stipulation executed by the borrower or the borrower's attorney and by the bankruptcy trustee.

2.After the court has lifted the stay, the lender shall, within 10 days of the court's order,

a.Contact the bankruptcy trustee and obtain a record of mortgage payments under the plan.

b.Apply all payments made by the borrower through the trustee and reconcile the borrower's account with the trustee's record of payments made.

c.Send to the Field Office a copy of the bankruptcy court order lifting the automatic stay and the updated payment ledger.

3.Upon receiving the bankruptcy order lifting the automatic stay and the updated payment ledger, the Field Office shall:

a.Send the Assignment Acceptance Letter (Appendix A, ASGN-15) to the lender.

b.Send Appendix A, ASGN-14 to the borrower with a forbearance agreement attached based on recent financial information (not older than 60 days).

4.Refer to paragraph 9-9 for guidance in assigning the mortgage.

5.If the lender advises it is no longer able to foreclose and therefore cannot assign the mortgage, close out the case in the Automated Assignment Processing System.

C.If the Field Office rejects the assignment of the mortgage, the Field Office must notify both the lender and borrower. See paragraph 7-2 for instructions in sending the negative decision letter.

9-9 Assigning the Mortgages

A.Lenders must record assignment of mortgages to HUD within 30 days of the date of the acceptance letter. The Field Office may

authorize an extension of time.

9-903/95

4330.2 REV-2

B.Lenders must submit requests for title approval on the same date they file the assignment for record.

C.Additional guidance is provided in HUD Handbook 4330.4 for completing the Single Family Application for Insurance Benefits, form HUD-27011.

9-10 Changed Circumstances After Assignment is Authorized

A.If, AFTER accepting assignment, the Field Office becomes aware of fraudulent facts or misleading information which raise doubts about the borrower's eligibility for assignment, the Field Office MUST investigate the matter fully and, when warranted, foreclose.

B.The Field Office's assignment acceptance letter creates a contractual obligation for HUD to pay the higher mortgage insurance claim resulting from assignment.

1.By law, HUD may NOT pay the higher claim unless the mortgage is assigned.

2.It is, therefore, IMPROPER to withdraw the authorization to assign the mortgage once you grant it (unless a previously unknown legal action, such as bankruptcy or fraud, precluded acceptance of the assignment).

03/959-10