
CHAPTER 4. HUD RESPONSIBILITIES

Section 1. Fiduciary

- 4-1. Through the Office of Multifamily Housing Management, the Department of Housing and Urban Development exercises fiduciary responsibility toward the taxpayer. It does this by minimizing losses in the multifamily insured loan and property disposition programs, by maximizing collections, by enforcing statutes and regulations, and by allocating, administering and monitoring subsidy-based programs in a cost-effective manner. HUD is charged with the responsibility to help provide and preserve an adequate supply of affordable housing. In carrying out this mission, HUD monitors the activities of mortgagors, managing agents, mortgagees, contract administrators, and other clients to assure compliance with the requirements of HUD's programs.
- 4-2. The relationship between HUD and the mortgagee is based on obligations in which each party has specific rights and responsibilities. The operating requirements and administrative practices of individual mortgagees differ widely. In many instances a mortgagee may not require or desire that it be kept advised of all actions between HUD and the mortgagor; the opposite may be true on the part of another mortgagee. Mutual cooperation and assistance between the mortgagee and HUD is of great value. Through their direct contact with individual mortgagees, HUD Field Offices learn the extent to which a mortgagee desires to be advised of HUD-mortgagor actions.
- 4-3. While the mortgagee has specific rights under each of the Sections and Titles of the National Housing Act which HUD must safeguard, the mortgagee also has definite responsibilities it must exercise. HUD is responsible for review of the conduct of mortgagee-HUD responsibilities and for insistence that those responsibilities be discharged adequately. HUD will

under the terms and conditions of the mortgage unless the parties' inability or unwillingness to reach an understanding appears likely to jeopardize the Secretary's interests. This does not preclude assistance to the mortgagor or the mortgagee when either party specifically requests such assistance and when it appears that HUD's participation on such requests will produce positive, constructive results.

4-4. The Mortgagee's Certificate is executed and submitted to HUD at the time of initial closing in the case of insurance of advances or at the time of final closing in the case of insurance upon completion. In addition to provisions with respect to the insurance of the mortgage, the Certificate contains agreements and certifications by the mortgagee concerning certain HUD requirements after insurance:

- a. "Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured mortgage or at such later date as may be agreed to by you HUD in writing, we the mortgagee shall require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your HUD's Commitment for Insurance constituting a 'Reserve Fund for Replacements' which fund will be subject to our order and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to the Commissioner within 60 days."

- b. "We the mortgagee understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid FHA Regulations, but all of said instruments are intended to be subject thereto. We hereby agree

to conform with and abide by such FHA Regulations in all matters with respect to the aforesaid loan and the project in so far as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations."

- c. "We (the mortgagee) certify that all insurance policies on the project required by the terms of the insured Mortgage will have attached thereto a standard Mortgage clause making the loss payable to the Mortgagee and the Secretary, Department of Housing and Urban Development, as their interests may appear."
- d. "No financing charges other than charges disclosed herein have been or will be made."
- e. "Whenever the terms 'Mortgage,' 'Mortgagor,' or 'Mortgagee' are used herein, the same shall be deemed to include respectively: the security instrument whether the same be a Mortgage or a Deed of Trust; the Obligor of the debt secured thereby; the obligee, or the Trustee(s) and the Beneficiary of said credit instrument. The term 'financing charge(s),' as used herein, shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders."

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- 4-5. HUD's fiduciary responsibility includes monitoring and enforcement of the above provisions of the Mortgagee's Certificate as well as the Regulations applicable to specific Sections of the Act. HUD's fiduciary responsibility also includes the payment of claims made upon the insurance funds by mortgagees when these claims are proper and substantiated. The following Section of this Chapter provides a brief description of claims processing.
- 4-6. In addition to its fiduciary responsibilities outlined above, HUD has other responsibilities to mortgagees and the mortgage industry as a whole.
 - a. HUD strives to cooperate with mortgagees and

provide whatever assistance it can. This assistance may take the form of technical advice, or it may be an active intervention with a recalcitrant mortgagor on behalf of the mortgagee in a particular circumstance. For example, HUD staff might recommend a more effective method of collection efforts on a delinquent account to a mortgagee.

- b. HUD provides information about changes in its requests, policies, or requirements to mortgagees through Mortgagee Letters that are issued as the need arises.
- c. HUD tries to establish standards which may be adopted by the industry. The classic example of this was the introduction of the self-amortizing home mortgage under the early insurance programs of the Federal Housing Administration. Today one seldom sees a first mortgage on a single family home which is not self-amortizing. One recent example for multifamily mortgage programs is the use of bond revenues (bond financing) for the construction or acquisition of apartment communities. Another example is the popularity and use of Mortgage Backed Securities (M.B.S.'s) in the secondary market for mortgages on rental apartment complexes.

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- d. On the other hand, HUD also has a responsibility to interact with a mortgagee on behalf of a mortgagor where HUD can be of assistance to resolve a problem between the two. That is, HUD interacts with both mortgagees and mortgagors for the protection of the mortgage insurance fund and to assure that projects are financially solvent and maintained in a physical condition that provides affordable, safe, and sanitary housing for the tenants.

Section 2. Claims Processing

- 4-7. This Section does not describe in detail nor set any standards for HUD's processing of claims made under multifamily mortgage insurance programs. It does not address assignments of mortgages under Section 221 (g)(4); it does not address coinsured mortgage claims. It does provide a brief overview of the claims processes surrounding defaulted loans so that

mortgagees may gain some insight into the Department's procedures. So that mortgagees will benefit from this knowledge, the Department is making this general information available to mortgagees before the occurrence of an assignment of a mortgage.

- 4-8. Background. HUD provides mortgage and loan insurance protection to approved mortgagees through the Federal Housing Administration (FHA) Consolidated Revolving Fund and through the payment of mortgage insurance premiums (MIPs) by mortgagees after collection from mortgagors. Payments of multifamily claims for insurance benefits are authorized by various sections of the National Housing Act. The multifamily mortgage insurance program includes both fully insured and coinsured project mortgages. When a fully insured mortgage is in default, the mortgagee has the option of foreclosing the loan and conveying title to HUD or assigning the mortgage to HUD. The usual procedure, assignment, is both faster and usually less costly to the mortgagee than foreclosure.

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- 4-9. Once the mortgagee has made its election, HUD processes the claim for insurance benefits making sure that the mortgagee has met all its obligations and has properly supported its claim. After the mortgagee has assigned the mortgage to HUD, the mortgagee's servicing responsibilities cease. HUD establishes a servicing program and undertakes the collection functions formerly performed by the mortgagee. If the mortgagee forecloses and conveys title to the property to HUD, HUD becomes the owner of the project.
- a. After HUD receives the mortgagee's election, HUD sends a fiscal data package to the mortgagee; the forms contained in this package must be completed and returned to HUD before the claim examination process for final settlement of insurance benefits can begin.
 - b. The mortgagee provides HUD with legal documents pertaining to the insurance claim; when HUD receives and reviews these documents, HUD sends the mortgagee a "date-setting" letter, advising the mortgagee to assign the mortgage or convey the project no later than the date set in this letter. On the date of assignment or

conveyance, the mortgagee must notify HUD by telegram or telecopy (facsimile) that the assignment or deed was recorded.

- 4-10. Based on the Section of the Act under which the Project was insured and on the insurance endorsement date, HUD determines if claims settlement is to be made in cash or by issuance of debentures. Debentures are obligations of the mortgage insurance funds and are unconditionally guaranteed by the United States. Debentures bear interest from the date of default at a rate established periodically by HUD. If the claim is paid in cash, the payment normally includes the amount of interest the mortgagee would have received if it had been paid in debentures. Interest is computed from the date of default to the date of payment.

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- 4-11. In order to minimize HUD's cost of interest accrual on claims to be made in cash, HUD may partially settle the mortgagee's claim. Partial settlements are not made for claims settled in debentures.
- a. The partial settlement process begins with HUD's receipt of the mortgagee's telegram (or fax) notifying HUD that the assignment or deed was recorded.
 - b. If the project's mortgage has been finally endorsed for insurance, the partial settlement of claim usually consists of ninety percent (90%) of the unpaid principal balance plus debenture interest accrued from the date of default to the date of partial settlement.
 - c. If the project's mortgage has not been finally endorsed, the amount of the partial settlement is usually seventy percent (70%) of the unpaid principal balance plus interest.
- 4-12. The mortgagee must submit all fiscal data and legal documents in support of its claim within forty five (45) days after the date of assignment or conveyance.
- 4-13. Insurance benefits generally include the unpaid principal balance of the loan, plus advances made by the mortgagee, minus funds in escrow accounts, and

minus receipts from other sources.

- a. A mortgagee can elect to assign the mortgage to HUD. If the mortgage is assigned, the mortgagee will be charged one percent (1%) of the unpaid principal balance. This amount represents foreclosure expenses that the mortgagee would have incurred if the mortgagee had elected to acquire title to the property and convey the property to HUD.
- b. A mortgagee can elect to convey title to HUD. Before it can convey title, the mortgagee must institute and complete foreclosure proceedings or obtain a deed-in-lieu of foreclosure from the

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mortgagor and take possession of the property. Because this method is so seldom chosen by mortgagees, further details regarding insurance benefits in these cases are not discussed in this Section. However, mortgagees considering this procedure may consult the Office of General Counsel's Multifamily Mortgage Division for further guidance.

- c. HUD may request the mortgagee to assign the mortgage to HUD in lieu of foreclosing on the property, in which case all or part of the one percent (1%) deduction is waived.

4-14. Miscellaneous claims. When the mortgagee notifies HUD of its intent to assign the mortgage to HUD, HUD may ask the mortgagee to accept a partial payment of the claim and modify the mortgage. HUD makes these requests only where this procedure would be less costly to HUD. Such a partial payment of claim may be made if the mortgagee voluntarily agrees to accept the proposal and if the mortgagor agrees to repay to HUD the amount of the partial payment. Upon such agreements, HUD establishes a second mortgage with terms that will assure that the estimated project income will be sufficient to cover operating expenses and the modified mortgage.

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