

### Subpart C—Servicing Responsibilities

SOURCE: 41 FR 49736, Nov. 10, 1976, unless otherwise noted.

#### GENERAL REQUIREMENTS

##### § 203.500 Mortgage servicing generally.

This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but failure to comply will be cause for imposition of a civil money penalty, including a penalty under § 30.35(c)(2), or withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed.

[70 FR 21578, Apr. 26, 2005]

##### § 203.501 Loss mitigation.

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department. Such actions include, but are not limited to, deeds in lieu of foreclosure under § 203.357, pre-foreclosure sales under § 203.370, partial claims under § 203.414, assumptions under § 203.512, special forbearance under §§ 203.471 and 203.614, and recasting of mortgages under § 203.616. HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the mortgagor's income, credit and property.

[59 FR 50145, Sept. 30, 1994, as amended at 61 FR 35019, July 3, 1996]

##### § 203.502 Responsibility for servicing.

(a) After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. The servicer must fully discharge the servicing responsibilities of

the mortgagee as outlined in this part. The mortgagee shall remain fully responsible to the Secretary for proper servicing, and the actions of its servicer shall be considered to be the actions of the mortgagee. The servicer also shall be fully responsible to the Secretary for its actions as a servicer.

(b) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(1) By the transferor mortgagee or servicer to the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(2) By the transferee mortgagee or servicer:

(i) *To the mortgagor.* The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(ii) *To the Secretary.* This notification shall be delivered within 15 days of the transfer, in a format prescribed by the Secretary.

[36 FR 24508, Dec. 22, 1971, as amended at 57 FR 47974, Oct. 20, 1992; 57 FR 58349, Dec. 9, 1992; 59 FR 65448, Dec. 19, 1994; 61 FR 36266, July 9, 1996]

##### § 203.508 Providing information.

(a) Mortgagees shall provide loan information to mortgagors and arrange for individual loan consultation on request. The mortgagee must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to mortgagors is required:

(1) An office staffed with competent personnel located within 200 miles of the property, capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the mortgagor.

(2) Toll-free telephone service at an office capable of providing needed information.

(b) All mortgagors must be informed of the system available for obtaining answers to loan inquiries, the office

from which needed information may be obtained and reminded of the system at least annually. Toll-free telephone service need not be provided to a mortgagor other than at the office designated to serve the mortgagor nor other than from the immediate vicinity of the security property.

(c) Within thirty days after the end of each calendar year, the mortgagee shall furnish to the mortgagor a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year. At the mortgagor's request, the mortgagee shall furnish a statement of the escrow account sufficient to enable the mortgagor to reconcile the account.

(d) Mortgagees must respond to HUD requests for information concerning individual accounts.

(e) Each servicer of a mortgage shall deliver to the mortgagor a written notice of any assignment, sale, or transfer of the servicing of the mortgage. The notice must be sent in accordance with the provisions of § 3500.21(e)(1) of this title and shall contain the information required by § 3500.21(e)(2) of this title. Servicers must respond to mortgagor inquiries pertaining to the transfer of servicing in accordance with § 3500.21(f) of this title.

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2502-0235)

[41 FR 49736, Nov. 10, 1976, as amended at 48 FR 28986, June 24, 1983; 59 FR 65448, Dec. 19, 1994]

#### § 203.510 Release of personal liability.

(a) *Procedures.* The mortgagee shall release a selling mortgagor from any personal liability for payment of the mortgage debt, if release is permitted by § 203.258 of this part, in accordance with the following procedures:

(1) The mortgagee receives a request for a creditworthiness determination for a prospective purchaser of all or part of the mortgaged property;

(2) The mortgagee or servicer performs a creditworthiness determination under § 203.512(b)(1) of this part if the mortgagee or servicer is approved for participation in the Direct Endorsement program, or the mortgagee re-

quests a creditworthiness determination by the Secretary;

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

(4) The prospective purchaser assumes personal liability by agreeing to pay the mortgage debt; and

(5) The mortgagee provides the selling mortgagor with a release of personal liability on a form approved by the Secretary.

(b) *Release after 5 years.* (1) If a selling mortgagor is not released under the procedures described in paragraph (a) of this section, either because no request for a creditworthiness determination is submitted under paragraph (a)(1) of this section, or because there is no affirmative determination of creditworthiness under paragraph (a)(3) of this section, then the selling mortgagor is automatically released from any personal liability for payment of the mortgage debt because of section 203(r) of the National Housing Act if:

(i) The purchasing mortgagor has assumed personal liability by agreeing to pay the mortgage debt;

(ii) Five years have elapsed after the assumption; and

(iii) The purchasing mortgagor is not in default under the mortgage at the end of the five-year period.

(2) If the conditions of this paragraph (b) for a release are satisfied, the mortgagee shall provide a written release upon request to the selling mortgagor.

(3) This paragraph (b) only applies to a mortgage originated pursuant to an application by the mortgagor on or after December 1, 1986 on a form approved by the Secretary.

(c) *Mortgagee to provide notice.* A mortgagee shall inform mortgagors (including prospective mortgagors seeking information) about the procedures for release of personal liability by providing a notice approved by the Secretary when required by the Secretary.

[58 FR 42649, Aug. 11, 1993]