

§ 203.350

excluded in computing the period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in § 203.355 of this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

[36 FR 24508, Dec. 22, 1971, as amended at 61 FR 36265, July 9, 1996]

ASSIGNMENT OF MORTGAGE

§ 203.350 Assignment of mortgage.

(a) *Assignment of modified mortgages pursuant to section 230, National Housing Act.* HUD may accept an assignment of any mortgage covering a one-to-four family residence if the following requirements are met:

- (1) The mortgage was in default;
- (2) The mortgagee has modified the mortgage under § 203.616 to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at an interest rate not exceeding current market interest rates; and
- (3) Such other conditions that HUD may prescribe, which may include the requirement that the mortgagee continue to be responsible for servicing the mortgage.

(b) *Assignments pursuant to section 248, National Housing Act.* Notwithstanding the provisions of paragraph (a), the Commissioner shall, upon application by the mortgagee, approve the assignment to the Commissioner of any mortgage insured pursuant to section 248 of the National Housing Act (see § 203.43h) where the mortgagor has been in default for more than 90 days. The mortgagee may not request the Commissioner to accept an assignment until the mortgagee has submitted documents to the Commissioner showing that the requirements of § 203.604 have been met. HUD shall then notify the mortgagee of its approval of the mortgagee's actions under § 203.604 and that the mortgagee may assign the mortgage to the Secretary, or HUD will specify what further action the mort-

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gagee must take to meet the requirements of § 203.604.

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided that the requirements of § 203.665 are satisfied.

(d) *Assignment of mortgages authorized by section 203(q), National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) if

- (1) The mortgagor has been in default for more than 90 days for failure to make a monthly payment,
- (2) The requirements of § 203.666 are satisfied, and
- (3) The date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

If the default is non-monetary, the date of default occurs prior to an action described in paragraph (d)(3) of this section, the requirements of § 203.666 are satisfied, and the mortgagor has been in default for more than 30 days, the Secretary may in his or her discretion, upon application by the mortgagee, agree to accept an assignment of the mortgage. If the leasehold estate has terminated before the mortgage has been assigned, or title to the property conveyed, to the Secretary, and the mortgage is in default for any reason for more than 30 days, the Secretary will, upon application by the mortgagee, agree to accept an assignment of the mortgage.

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a

defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2502-0169)

[51 FR 21872, June 16, 1986, as amended at 52 FR 48202, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 53 FR 13404, Apr. 25, 1988; 55 FR 282, Jan. 4, 1980; 61 FR 35018, July 3, 1996]

§ 203.351 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record, the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with the receipts covering all disbursements, as required by the fiscal data form. In addition, the following requirements shall be met:

(a) *Items to be included with application.* The following items shall be forwarded to the Commissioner with the application:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

(3) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(5) *Property.* All property of the mortgagor held by the mortgagee or to which it is entitled (other than the

cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(8) *Title evidence.* All title evidence held by the mortgagee. It need not be extended to include the recordation of the assignment. If a mortgagee's title policy is furnished, the Commissioner shall be a named insured under such policy.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

(c) Title evidence for mortgages insured under § 203.43d as set forth in § 203.385 shall accompany the application for insurance benefits.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 7693, Apr. 10, 1972; 42 FR 57435, Nov. 2, 1977]

§ 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

CLAIM PROCEDURE

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (i) of this section, the