

not be added to the mortgage balance of the mortgagor.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42761, Aug. 16, 1995]

§ 206.115 [Reserved]

§ 206.116 Refunds.

No amount of the initial MIP shall be refundable.

[60 FR 42761, Aug. 16, 1995]

HUD RESPONSIBILITY TO MORTGAGORS

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary may hold a second mortgage to secure repayment by the mortgagor under §206.27(d) or may accept assignment of the first mortgage.

[61 FR 49033, Sept. 17, 1996]

§ 206.119 [Reserved]

§ 206.121 Secretary authorized to make payments.

(a) *Investigation.* The Secretary will investigate all complaints by a mortgagor concerning late payments. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand that within 30 days from the demand, the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Financial Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand, then the Secretary shall pay an insurance claim as provided in §206.129(e)(3) and assume all

responsibilities of the mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in §206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in §206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage, if any. Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Secretary begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42761, Aug. 16, 1995; 61 FR 49034, Sept. 17, 1996; 61 FR 67931, Dec. 26, 1996]

CLAIM PROCEDURE

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of §206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in §206.121(b);

(3) The mortgagor sells the property for less than the mortgage balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in §206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in §206.125(g) for an amount which does not satisfy the mortgage balance or fails to sell the

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property as provided in § 206.127(a)(2); or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the mortgage balance, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term *mortgagor* as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1989, as amended at 60 FR 42761, Aug. 16, 1995]

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable, unless the mortgage is due and payable by reason of the mortgagor's death. The mortgagee shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the mortgagor to pay any costs that the mort-

gagee incurred to reinstate the mortgagor, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The mortgagee shall obtain an appraisal of the property no later than 30 days after the mortgagor is notified that the mortgage is due and payable, or no later than 30 days after the mortgagee becomes aware of the mortgagor's death, or upon the mortgagor's request in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. The appraisal shall be at the mortgagor's expense unless the mortgage is due and payable. If the mortgage is due and payable, the appraisal shall be at the mortgagee's expense but the mortgagee shall have a right to be reimbursed out of the proceeds of any sale by the mortgagor.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure