
CHAPTER 9. FORECLOSURE AND ACQUISITION OF THE PROPERTY

- * 9-1 A. GENERAL. This Handbook Revision does not include details of the claims policy. Mortgagees must refer to HUD Handbook 4330.4 "FHA Single Family Insurance Claims," and any Mortgagee Letters issued after the current edition of Handbook 4330.4. Where the provisions of this Handbook differ from new regulations, the regulations and the Mortgagee Letter explaining the regulations control. *
- B. Defaulting Mortgagor Unable To Resume Payments. When a defaulting mortgagor either cannot or will not resume and complete the mortgage payments, the mortgagee must take steps to acquire the property or see that it is acquired by some third party. Before starting foreclosure, the mortgagee must review its servicing record to be certain that servicing has been prudent and adequate. However, when foreclosure is appropriate, mortgagees must process foreclosure in a timely manner. *
- 9-2 ACTIONS PRIOR TO ACQUISITION. The mortgagee must sufficiently document its actions to satisfy a reviewer that the requirements of this Handbook have been met.
- A. Management Review (24 CFR 203.606). The mortgagee must review its records before starting foreclosure (See Paragraph 7-11) to ensure that:
1. HUD's servicing requirements, both regulatory and those set forth in this Handbook have been met; and
 2. every reasonable effort has been expended to avoid the foreclosure through the use of other servicing options (a loss mitigation review should be accomplished);
 3. written evidence must be contained in the file that the mortgage holder agreed to the foreclosure.
- B. Quality Control (24 CFR 202.12(j)). A requirement for the continuing approval of a mortgagee is the presence and utilization of an adequate quality control plan covering both origination and servicing procedures. Ensure that the quality control plan includes the process of applying for FHA insurance benefits. Additional guidance regarding quality control plans may be found in Chapter 1, Paragraph 1-4C.

C.Credit Bureau Reporting. Ensure that the account has been accurately reported to the national credit information repositories in accordance with FNMA's guidelines. (See Paragraph 6-8A)

D.Single Family Default Monitoring System (SFDMS) (203.332, 203.356). Ensure that the account has been accurately reported to the SFDMS.

E.Assignment Program. The procedures required to offer the mortgagor an opportunity to have the account (assumptions only) considered for assignment to HUD, as described in Chapter 8, must be followed.

F.Notification Of Other Parties To The Mortgage. Ensure that former mortgagors, co-mortgagors and/or co-signers have been notified, as appropriate, to provide an opportunity to avoid a foreclosure.

G.Sale Of The Property. Whenever possible, the mortgagor should be given an opportunity to sell the property and should be given a reasonable time to complete the sale. Foreclosure should not be started if it appears that a bona fide sale is probable. Payments tendered while the property is for sale and before foreclosure is started should be accepted.

H.Reinstatement (24 CFR 203.608). If the mortgagor offers complete reinstatement, including costs incurred by the mortgagee in instituting foreclosure, the reinstatement must be permitted, except that under the following circumstances mortgagees may, in their discretion, decline to allow reinstatement:

1.if within the 2 years immediately preceding the commencement of the present foreclosure action the account has been reinstated from foreclosure;

2.if reinstatement would preclude foreclosure after a later default; or

3.if reinstatement would adversely affect the priority of the lien.

9-3FORECLOSURE. (See Paragraph 7-12D1 and 2). Foreclosure should be considered only as a last resort and shall not be initiated until all other relief options have been exhausted. When foreclosure cannot be avoided, it must be started quickly and prosecuted vigorously to minimize losses to both the mortgagee and HUD.

*In Power of Sale states, judicial foreclosure should be avoided where possible, but it may be necessary to pursue a judicial foreclosure where a deficiency judgment is to be sought. The mortgagee is responsible for complying with local laws governing foreclosure and for conveying good marketable title to HUD.

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A.Time Limits: Time limit requirements for conveyances are listed below. If these time frames are not met, mortgagees can lose a significant amount of money as a result of debenture interest curtailments on their Claim for Insurance Benefits. For further guidance and complete time frame requirements for all claim types, refer to HUD Handbook 4330.4.

* 1. Initiate action to acquire the property within 9 months from the date of default or within 120 days after the date the property became vacant (24 CFR 203.355). If the mortgage is in default and the property has been determined to be vacant or abandoned, foreclosure must be initiated (or a deed in lieu of foreclosure must be recorded) within 9 months after the date of default or within the later of 120 days after the date the property became vacant, is discovered vacant, or should have been discovered to be vacant.

"Initiation of foreclosure" for HUD's purposes is defined as the first public action required by law, such as filing a complaint or petition, recording a notice of sale or publication.

a.If there is a special forbearance agreement extending beyond nine months from the date of default, foreclosure must be started within 90 days after the due date of the oldest unpaid installment under the agreement, unless this is prohibited by law.

b.Where state or local law prevents starting foreclosure within these limits, it must be started within 60 days after it becomes possible to do so.

(1)In the case of bankruptcies, this time period begins when the court lifts the stay or otherwise makes it possible to foreclose, not when the mortgagee learns of the court's action. The time may be extended by the local HUD Office, but only

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original
time limit expires.

if the extension is requested before the

(2)The time is also extended if the mortgagor is

a
person in military service, as defined by the
Soldiers and Sailors Civil Relief Act of 1940.
The time limits specified above may be extended
automatically, without specific HUD approval, by
the period of military service plus 3 months,
regardless of whether or not the mortgagor has
applied to the courts for a stay of
foreclosure.

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2. Provide written notice within 30 days of the institution of
foreclosure (24 CFR 203.356). This requirement is
considered met when mortgagees properly report delinquent
cases on their monthly SFDMS default report. (SFDMS
reporting is explained in detail in Chapter 7.)

3. Prosecute foreclosure with reasonable diligence. Mortgagees
are expected to exercise reasonable diligence in prosecuting
foreclosure to completion as required in HUD regulations 24
CFR 203.356. Appendix 37 provides a state by state listing
of foreclosure time frames which the Department has
established.

4. Convey the Property to the Secretary within 30
calendar days after acquiring possession of and
good marketable title to the property (24 CFR
203.359). For mortgages insured under a firm
commitment issued on or after November 19, 1992, or
under Direct Endorsement processing when the credit
worksheet was signed by the mortgagee's approved
underwriter on or after November 19, 1992, within
30 days of the later of:

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- a. Filing for record the foreclosure deed;
- b. Recording date of a deed-in-lieu of foreclosure;
- c. Acquiring possession of the property;
- d. Expiration of the redemption period; or
- e. Such further time as HUD may approve in writing.

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In cases where the mortgagee arranges for a direct conveyance of the
property to the Secretary, the property must be conveyed to the
Secretary within 30 days of the "reasonable diligence" timeframe.

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5. On the date the deed to the Secretary is filed for record, notify the Commissioner on Form HUD-27011. (File the claim for insurance benefits and ensure the Local HUD Office receives their copy).

NOTE: This time frame is important because the local HUD Office is not aware that a property has been conveyed to the Secretary until receipt of the claim (24 CFR 203.360 and 361).

6. As soon as possible, but within 45 days after the date the deed is filed for record, send to the local HUD Office title evidence reflecting ownership vested in the name of the Secretary (24 CFR 203.365). HUD allows mortgagees 45 days plus a 10 day mailing time for the local HUD Office to receive title evidence. However, if the courier receipt shows that the mortgagee did not mail the title evidence by the 45th day, without an approved extension, HUD will consider it late.

7. Within 45 days after the date the deed is filed for record or within such time that it will be received in HUD Headquarters within 15 days from the date of the title approval letter, whichever is later, submit the original of Part B of Form HUD-27011 to HUD Headquarters and a copy of Part B with the originals of Parts C, D, and E to the local HUD Office (24 CFR 203.365).

NOTE: Refer to Chapter 8, Paragraph 8-7H, for time limits on assigned mortgages.

* B. Extension Of Time. HUD may approve extensions of time limits under the following conditions. (See Paragraph 1-6 of HUD Handbook 4330.4)

1. Time Extension Requirements:

a. All extension requests must be submitted on Form HUD-50012.

b. All extension requests must be received prior to the deadline.

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c. All extension requests must be directed to the appropriate Local HUD Office.

d.No verbal requests shall be accepted.

e.All requests for extensions of time must provide adequate justification. Mortgagees must clearly define the circumstances and reason(s) for the request. Vague or unclear requests will be denied.

f.A copy of the Local HUD Office's written response shall be maintained in the mortgagee's claim review file.

2.The following are considered as separate actions and are not considered as requests for extensions of time:

a.Requests to take specific protection and preservation actions (such as boarding),

b.Requests to exceed preservation and protection cost limits, or

c.Requests to convey damaged property. HUD's approval of these actions does not extend the time to convey title, and any requests for extensions of time must be submitted and approved separately.

3.Mortgagees are prohibited from setting time limits for HUD to respond or interpreting such limits as an automatic extension approval.

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9-4DEEDS-IN-LIEU OF FORECLOSURE (24 CFR 203.357). When the mortgage is in default, the mortgagee must consider accepting voluntary conveyance to avoid foreclosure. This is especially true where the foreclosure process is time-consuming, expensive, or where there is an extensive redemption period. HUD expects mortgagees to take a deed-in-lieu where appropriate in order to minimize HUD's losses. Deeds may not be accepted from mortgagors judged able to make the mortgage payments.

A.Use Of The Credit Alert Interactive Response Systems (CAIVRS) In Deeds-in-Lieu Of foreclosure. CAIVRS must be used when pre-screening mortgagors' eligibility for deeds-in-lieu. Mortgagees must use CAIVRS to find out if the mortgagor has another FHA-insured mortgage in

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default or if a claim for insurance benefits has been paid for another FHA-insured mortgage executed by the mortgagor. If the system indicates that the mortgagor does have another FHA-insured mortgage in default or a claim has been filed or paid, then the

case must be forwarded to the HUD Field Office where the property is located for approval to accept a deed-in-lieu.

B.HUD Approval Not Required. HUD approval is not required to accept a deed-in-lieu if the mortgagor is not a corporation/partnership and does not own any other property subject to a mortgage insured or held by HUD, and the following requirements are met:

- 1.the mortgage is in default when the deed is executed and delivered;
- 2.the credit instrument is canceled and surrendered to the mortgagor;
- 3.the mortgage is satisfied of record;
- 4.the deed from the mortgagor is a general warranty deed and conveys good marketable title;
- 5.the mortgagee conveys good marketable title to the Secretary and provides satisfactory title evidence.

C.HUD Approval Required. HUD may approve acceptance of a deed from a corporation/partnership mortgagor or from one owning more than one property subject to an insured mortgage or one held by HUD. If HUD approval is granted to accept a deed-in-lieu from a corporate mortgagor or an individual owning more than one property, the requirements identified in item (A) above must also be met. Requests for approval are submitted to the HUD Field Office where the property is located and must be accompanied by:

- 1.a statement of the cause of default;
- 2.an accounting of the assets of the mortgagor other than the mortgaged property and a statement as to the disposition of income, if any, from those assets; and
- 3.any other information that might assist in the proper consideration of the request.
- 4.any other information which HUD may request.

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D.Time Limits. To avoid a debenture interest curtailment on the claim for Insurance Benefits, the deed must be recorded within nine months after the date of default. If, by operation of law, the mortgagee is unable to accept the deed within that time, it must be accepted within 60 days after it becomes legally possible to do so in order to avoid a debenture interest curtailment.

Extensions of these time limits may be granted by local HUD Offices, but only if the extension is requested before the allotted time has expired.

E. Form Of Conveyance. Title may be conveyed:

1. directly from the mortgagor to HUD (this is preferred as the least expensive and quickest method); or

2. from the mortgagor to the mortgagee and then from the mortgagee to HUD; or

3. the mortgagee may elect not to convey title to HUD and to terminate the contract of mortgage insurance. If this decision is made, HUD must be notified on Form HUD-27050-A, as discussed in Chapter 5.

F. Secondary Liens. The existence of secondary liens upon the property may bar acceptance of a deed. Sometimes these liens can be negotiated so that clear title can be granted. Mortgagees are expected to contact secondary lienholders in an effort to clear title to the property.

G. Compensation.

1. To assist in encouraging deeds-in-lieu, the mortgagee may pay the mortgagor a consideration for conveying title by deed. Up to \$500 of such compensation may be included as a cost of acquisition.
* Mortgagees will receive full reimbursement
for the amount paid to the mortgagor in the claim
* for mortgage insurance benefits.

2. No compensation may be included as a cost of acquisition in the claim, if the property is conveyed occupied as provided for in Paragraph 9-11, below, or if the mortgage is insured under Section 244 in the coinsurance program.

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H. Monitoring. For HUD's monitoring purposes, mortgagees must maintain documentation in their servicing files which support efforts to have a deed-in-lieu tendered to the Department.

* 9-5 Pursuing Collection Of Funds From Mortgagors Whose Mortgages Have Been Foreclosed. HUD Regulations (24 CFR 203.351(a)(4), 203.360 and 203.368(i)(2)), prohibit any mortgagee from collecting (or attempting to collect) from mortgagors any difference between the amount collectible under the mortgage instrument (i.e., the

principal, mortgage interest, late fees, attorney fees, etc.) and the maximum amount of insurance benefits paid by HUD.

Any mortgagee that is pursuing, or has pursued in the past, the collection of funds (mortgage losses) from a mortgagor whose mortgage has been foreclosed must immediately take the following corrective action in order to rectify this violation of HUD regulations:

A.If a legal process was used to adjudicate that collection of funds by the establishment of a debt (i.e., deficiency judgment process) then the mortgagee must immediately assign this judgment along with all monies collected to date to the Secretary of HUD. The judgment or other evidence of debt must be sent to the local HUD Office that has jurisdiction over the mortgage.

B.If a legal process was not used to adjudicate the collection of funds by the establishment of a debt, the mortgagee must:

- 1.Stop any collection efforts currently in process;
- 2.Refund to the mortgagors all monies collected to date;
- 3.Void and return to the mortgagors any executed notes

or
loan agreements obligating them to reimburse your company for its losses; and

4.Remove from the mortgagors' records all information supplied to the credit bureau agencies which reflect this debt.

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9-6RENTAL OF PROPERTIES (24 CFR 203.403(b)). If there is a lengthy redemption period and the mortgagee has possession of the property during that period, the best protection

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against damage to the property may be to keep it occupied by tenants. HUD will not reimburse the mortgagee, however, for costs incurred solely in renting the property. These costs must be recovered from rental income. Although rental expenses and rental income will be shown separately on the claim form, rental expenses are allowable only as an offset to rental income. If rental produces a net profit, that profit will serve to reduce the amount of the claim.

9-7CLAIMS WITHOUT CONVEYANCE OF TITLE (CWCOT) (24 CFR 203.368).

USE OF THE CWCOT PROCEDURE WILL BE SPECIFICALLY DIRECTED OR AUTHORIZED

BY THE LOCAL HUD OFFICE

A. Section 426 Of The Housing And Urban-Rural Recovery Act Of 1983 Amended Section 204(a) Of The National Housing Act. The statutory amendments authorize payment of claims for insurance benefits without conveying title of the foreclosed properties to the Department. The regulation provides the mechanics, e.g., bidding and reimbursement procedures, which would be used in the event that HUD determines that it would be appropriate to pursue a deficiency judgment.

B. Limited Application Of Selection Criteria. On August 1, 1990, the regulatory procedure for CWCOT was adapted for use only in cases involving deficiency judgments, or other situations where HUD either requests or requires a mortgagee to obtain a property appraisal or to use CWCOT.

The CWCOT instructions are general in nature and do not address themselves to particular State legal requirements. They should be implemented to the greatest degree possible within the confines of applicable State law.

C. Time Lines For Use Of CWCOT (See Appendix 38(A)).

1. Mortgagee can decline use of the CWCOT procedure on mortgages insured prior to November 30, 1983.

2. HUD can require a mortgagee to use the CWCOT procedure for all FHA-insured mortgages for which a conditional commitment to insure was issued or under the Direct Endorsement Program, where the

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property appraisal report was signed by the mortgagee's underwriter on or after November 30, 1993. (24 CFR 203.368)

3. Mortgagee can decline to pursue a deficiency judgment, when such action is requested by HUD, on mortgages insured before March 28, 1988, but the mortgagee can be required to use CWCOT which will allow HUD to pursue the deficiency judgment directly.

4. Mortgagee must pursue a deficiency judgment and use the CWCOT procedure if HUD requires on mortgages that date after March 28, 1988. (24 CFR 203.369)

NOTE: A mortgagee may request approval to pursue a deficiency judgment on any mortgage including those insured before November 30, 1983, where it deems such action appropriate, based upon an individual case

determination and under applicable HUD criteria. If HUD approval is granted, the mortgagee shall use the CWCOT procedure and subsequently may file a claim under this provision.

D.Mortgagee Responsibility

1.Submission of the HUD-91022. Where HUD has directed or authorized a mortgagee to use the CWCOT procedure, the mortgagee must:

a.Estimate the foreclosure sale date.

b.Prepare the Form HUD-91022, Mortgagee Notice of Foreclosure Sale, Part A (See Appendix 38, pages 1 and 2), no later than 45 days prior to the estimated foreclosure sale date.

c.Hand carry or mail the HUD-91022 to the local HUD Office, Single Family (SF) Loan Management Branch 45 days prior to the estimated foreclosure sale date and label the envelope "CWCOT/ Deficiency Judgment/Foreclosure Sale". (See Appendix 21, FHA Field Office Codes, to determine which local HUD Office to contact.)

d.Confirm the actual date of the foreclosure sale by furnishing a copy of the legal Notice of Sale or other notification of the actual foreclosure sale date to the local HUD Office SF Loan Management Branch on or before the date of publication, posting, or other standard legal

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notice, inserting at the top of the notice the following data:

- (1)"Deficiency Judgment Case",
- (2)the Mortgagee Loan Number,
- (3)the FHA Case Number, and
- (4)the Mortgagor's Name.

2.Request an Appraisal. To complete the HUD-91022, the mortgagee must:

a.Call the Valuation Branch, Assignment Clerk, in the local HUD Office which has jurisdiction over the property to obtain the name of a fee appraiser (or HUD

staff person, if one is available), to perform the appraisal. Mortgagees must provide the name of the appraiser in Part A, Block 14 of the HUD-91022. The appraisal is required to calculate the CAFMV (See Paragraph F below).

b. In areas where a pre-foreclosure appraisal must be made by an independent appraiser, such as one employed by the Sheriff's Office, the mortgagee shall submit that appraisal, if it is obtainable, along with the HUD-91022 in lieu of requesting a HUD-approved fee appraiser. Submit these documents at least thirty (30) days prior to the actual foreclosure date.

NOTE: If the mortgagee encounters any problems in arranging the appraisal, contact the local HUD Office, Valuation Branch.

3. Contact the Appraiser. When the HUD-91022 is submitted, the mortgagee shall forward a completed application for Property Appraisal and Commitment, Form 92800 package including a Uniform Residential Appraisal Report (URAR) to the appraiser or to the HUD Valuation Branch, if a HUD staff person is to perform the appraisal (URAR is not required for HUD staff). Label the top of the HUD 92800, "PROPERTY IN FORECLOSURE/CWCOT/DEFICIENCY JUDGMENT".

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a. Fee appraisers will follow outstanding instructions in completing the appraisal within five (5) working days of receipt of the request.

b. HUD is aware that entry into tenant-occupied properties may not be possible. Fee appraisers shall provide the best estimate of value possible based upon an exterior review, tax records, a comparison of comparable properties and other available information and so indicate in the report.

c. Fee appraiser shall provide the appraisal report to the local HUD Office, Valuation Branch and a copy to the mortgagee or the HUD staff person will provide a copy of the report to the mortgagee.

4. Advise Local HUD Office of Actual Foreclosure Sale Date. If the actual foreclosure sale date occurs sooner than estimated, the mortgagee must send the HUD-91022 and the

legal Notice of Sale notification to the HUD Office SF Loan Management Branch immediately.

NOTE: The local HUD Office shall monitor the CWCOT procedure closely to assure that the bid amount is provided to the mortgagee in time for the foreclosure sale or that instructions are provided to the mortgagee to reschedule the sale, if necessary. (See Paragraph G-6 below.)

5. Prepare accurate and complete forms. Sign all forms and contact the local HUD Office regarding any questions in completing the forms.

6. Mortgagor Reinstates the Mortgage. If the mortgagor reinstates the mortgage after foreclosure has been instituted, cancel the appraisal if it has not been completed. The mortgagee shall advise the local HUD Office, SF Loan Management Branch by telephone and follow up with a letter to the attention of the SF Loan Management Branch which indicates the FHA Case Number and states that it is a CWCOT/Deficiency Judgment case.

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E. Advertising is not required.

F. Commissioner's Adjusted Fair Market Value (CAFMV)

1. Explanation. The CAFMV is the estimate of the fair market value of the mortgaged property, less adjustments, which may include without limitation, HUD's estimate of holding and resale costs that would be incurred if title to the mortgaged property is conveyed to HUD.

Local HUD Offices will not forward the CAFMV to the mortgagee until the actual foreclosure sale date notification has been received. The CAFMV will be provided at least five (5) working days prior to the actual foreclosure sale date. If the CAFMV has not been received by the mortgagee at least five (5) days prior to the foreclosure sale, the mortgagee is requested to contact the local HUD Office SF Loan Management Branch.

2. Delay in Receipt of CAFMV. If a mortgagee incurs repeated unsuccessful attempts to contact the local HUD Office to obtain the bid amount, it should proceed with the sale, bid as it chooses, follow the conveyance procedure, but clearly document such circumstances for HUD monitoring purposes.

G. Foreclosure Sale Bidding.

1.CAFMV Amount. When the CAFMV is provided, the mortgagee must bid the CAFMV amount if it wishes to reserve the option to retain or convey title to HUD and file a claim for the insurance benefits.

2.Minimum Bid. If the minimum bid amount required under State law is less than the CAFMV amount, the mortgagee must bid the CAFMV amount to reserve the option to retain or convey the property to HUD.

3.Bid in Excess of the CAFMV. If the mortgagee bids an amount in excess of the CAFMV, without justifiable cause, it is deemed to have made an election not to file a mortgage insurance claim with conveyance of title to the Department and HUD may refuse to reimburse the mortgagee for the deficiency judgment-related expenses.

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4.Waiver Provisions for Bids Required by State Law. There may be special circumstances, such as when the mortgagee may be required under State law to bid in excess of the CAFMV, which will justify a mortgagee not bidding the CAFMV. Under such circumstances, the mortgagee shall not be deprived of its ability to convey title to the property to HUD.

If the State bid is in excess of the CAFMV, the mortgagee must call the HUD SF Loan Management Branch immediately after, but no later than five (5) days after the foreclosure sale, to obtain approval to convey title to the property to HUD. The mortgagee must:

a.indicate that it received Field Office approval by providing the date of the approval letter in the "Mortgagee's Comments Section" on the Claim for Insurance Benefits, Form HUD-27011 (Appendix 6) and,

b.maintain a copy of the HUD Office approval letter in the mortgagee's Audit File for review purposes.

NOTE:In some jurisdictions that have extraordinarily high transfer taxes, some mortgagees customarily commence the bidding at nominal amounts. Where mortgagees intend to convey title of the property to HUD, mortgagees may continue this practice. However, in the face of competing bids, mortgagees must, if necessary, bid up to the CAFMV or risk not being able to file a claim. Mortgagees are cautioned that if the property is not to be conveyed to HUD so that a Claim Without Conveyance

of Title is filed, i.e., title is retained by the mortgagee, purchased by a third party bidder or redeemed, the mortgagee must bid, as a minimum, the CAFMV.

5. Inadvertent Bidding Errors. The mortgagee must bid the CAFMV as instructed, in writing, by the local HUD Office. The local HUD Office shall not permit the mortgagee to convey title to HUD unless the mortgagee has good cause for a bidding error. For example, if the mortgagee's explanation for its

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bidding error relates to difficulties within its own internal operations, approval to convey shall be denied. The mortgagee must have an established procedure under its Quality Control Plan to prevent such occurrence. (See Handbook 4060.3 REV-2 and Appendix 11-E regarding Quality Control Plan.)

The general rule is that only in "very unusual circumstances, which were beyond the mortgagee's control" shall the HUD Office approve conveyance of title to HUD. Such approval shall be monitored carefully.

6. Reschedule the Foreclosure Sale. The mortgagee may be requested to reschedule the foreclosure sale if there is a delay in the completion the appraisal and calculation of the CAFMV in time for the sale date. The use of the CWCOT procedure is required where the decision has been made to pursue a defaulting mortgagor for a deficiency judgment, and, conversely, the deficiency amount is based on the difference between the CWCOT-required appraisal of the property and the outstanding mortgage debt.

Postponement of the foreclosure sale should be avoided, but if it becomes necessary, the SF Loan Management Branch will contact the mortgagee immediately to explain the reason(s) for the delay and shall request the mortgagee to reschedule the foreclosure sale. HUD shall provide a letter to the mortgagee regarding such request for the mortgagee's audit file.

7. Inspection of Vacant Property. The mortgagee is responsible to inspect the property, if the property is vacant. If, during the period prior to the foreclosure sale the property is found to be damaged, the mortgagee must notify the HUD Office, Loan Management Branch.

The mortgagee shall request a second appraisal (if the four

(4) months effective period has expired on the first appraisal) and follow the same requirements in paragraph D above, when a new foreclosure sale date has been established. The mortgagee shall add to the top of the HUD-92800, "UPDATED APPRAISAL, PROPERTY IN FORECLOSURE/CWCOT/DEFICIENCY JUDGMENT".

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H.Acquisition Of Title At Foreclosure Sale

At the foreclosure sale, either the mortgagee or a third party will be the successful bidder. Also, the mortgagor or a third party may redeem the property.

1.If the mortgagee is the successful bidder:

a.Where the mortgagee is the successful bidder for an amount equal to the CAFMV, the mortgagee may elect to either retain title to the property, or convey title to the property to HUD.

(1)When the mortgagee retains title, it must file its claim within 30 days after acquiring good, marketable title to the mortgaged property (24 CFR 203.359). The mortgagee may file a claim for insurance benefits as provided in 24 CFR 203.401(b).

(2)When the mortgagee conveys title to the property to HUD, the mortgagee must transfer the property to HUD within 30 days after acquiring good marketable title to and possession of the mortgaged property, or within such further time as may be approved by the local Field Office. The mortgagee may file a claim for insurance benefits as provided in 24 CFR 203.401(a).

b.Where the mortgagee is the successful bidder for an amount in excess of the CAFMV, the mortgagee is deemed to have elected to retain title to the property, and cannot convey title to the property to HUD. The mortgagee is limited to filing a claim for the insurance benefits computed as provided in 24 CFR 203.401(b), which will be calculated on the basis of the bid amount.

However, if the local HUD Office approved the mortgagee's justification for having bid an amount in

excess of the CAFMV as discussed in paragraph G.4 above, HUD would waive this provision and allow the mortgagee to convey title to HUD if it so chooses. The mortgagee would file a claim for the insurance benefits as provided in 24 CFR 203.401(a).

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Whether the mortgagee retains the property or receives approval to convey the property, the mortgagee has 30 days after acquisition of good marketable title to submit its claim for insurance benefits to HUD (if any) on Form HUD-27011, Single Family Application for Insurance Benefits. If the mortgagee receives approval to convey the property, "possession of" the property, as well as good marketable title, shall apply.

NOTE: If the mortgagee bids an amount in excess of the CAFMV, and is subsequently penalized for such action, this does not excuse the mortgagee from its duty to assign to HUD any deficiency judgment if the mortgagee intends to file for any reimbursement permitted under the insurance claims procedures.

c. Where the mortgagee is the successful bidder for an amount which is less than the CAFMV, the mortgagee can only obtain the insurance benefits by conveying title to the property to HUD. If the mortgagee retains title to the property, the mortgagee would not be able to file a claim.

If the mortgagee elects to convey title to HUD, the mortgagee must transfer the property to HUD within 30 days after acquiring good marketable title to and possession of the mortgaged property. The mortgagee may file its claim for insurance benefits in accordance with 24 CFR 203.401(a).

d. If the mortgagee retains title to the property, HUD will not pay for any of the following costs incurred by the mortgagee:

- (1) Costs to maintain the property after the foreclosure sale,
 - (2) Eviction costs, or
 - (3) Costs to sell the property.
-

2.If a third party is the successful bidder:

a.Where a third party is the successful bidder at the foreclosure sale for an amount equal to or greater than the CAFMV, the mortgagee must submit its claim for insurance benefits (if any) on Form HUD-27011, Single Family Application for Insurance Benefits, within 30 days after the date the third party acquires good marketable title to the property. When the claim is calculated, the proceeds of the sale shall be deducted from the principal balance of the mortgage which was unpaid on the date of the foreclosure proceedings.

b.Where a third party is the successful bidder at the foreclosure sale for an amount which is less than the CAFMV, the mortgagee will not be able to file a claim.

3.If the mortgagor or a third party redeems the property:

Where the mortgagor exercises the right of redemption and redeems the property or a third party redeems the property, pursuant to the mortgagee or a third party bidding and acquiring title to the mortgaged property for an amount not less than the CAFMV, the mortgagee must submit its claim (if any) within 30 days after the property is redeemed. The redemption amount will be deducted from the principal balance of the mortgage when the claim is calculated.

4.If a third party sale falls through, State laws govern disposition, e.g., re-advertising the property, reverting to next highest bidder, etc. Since the deed would not have been filed for record, acquisition of good marketable title would not have been obtained. The mortgagee would still have 30 days from the date when such title is obtained to file the claim. (Refer to paragraph G.6 above regarding postponement of the foreclosure sale.)

5.In the event of a third party purchase, HUD will not reimburse the mortgagee for eviction costs. Also, HUD will not reimburse the mortgagee for

expenses incurred to preserve and protect the property after

the foreclosure sale.

I. Deed-in-Lieu Of Foreclosure.

A deed-in-lieu of foreclosure shall not be considered by a mortgagee in cases where a decision has been made by HUD to pursue a deficiency judgment.

J. Claim Instructions. Mortgagees must refer to the existing instructions for completing and submitting the HUD-27011 claim form.

9-8 DEFICIENCY JUDGMENTS. (24 CFR 203.369; 24 CFR 203.402(o).)

A. Department-wide Program. Deficiency judgments are being pursued Department-wide except where state law makes them impossible or highly impracticable.

B. Purpose For Pursuing Deficiency Judgments.

1. Deterrence of future abuse of HUD programs.
2. Collection of revenue to offset losses to HUD.

C. Initiating The Deficiency Judgment Process.

1. Local HUD Offices use internal data pertaining to defaults and foreclosures to identify mortgagors against whom deficiency judgments should be sought; these offices will request or require the mortgagee to take appropriate action.

2. A mortgagee can initiate the process by notifying the Loan Management Branch Chief in the local HUD Office that it has information indicating that a mortgagor meets the criteria for pursuit of a deficiency judgment.

D. Use Of "Claims Without Conveyance Of Title" Procedure. Mortgagees must use the CWCOT procedure when pursuing deficiency judgments against defaulting mortgagors (See Paragraph 9-7).

E. Assignment Of Judgments Required. Deficiency judgments successfully pursued by mortgagees must be assigned to HUD if the mortgagee files a claim for mortgage insurance

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benefits. Assigned judgments must be transmitted to the local HUD Office with jurisdiction over the foreclosed mortgage within 30 days of being obtained. The mortgagee must not engage in judgment collection activities, unless the mortgagee will not file a claim for FHA insurance benefits in that case.

F.Collection And Post-collection Activities. HUD will utilize various methods to collect once the judgments have been assigned. Even before a judgment is formally obtained, a mortgagor or his legal representative can approach the local HUD Office to discuss a settlement of the potential deficiency judgment. In addition, mortgagees are advised to encourage mortgagors being pursued for deficiency judgments to contact the local HUD Office if they are prepared to discuss an early resolution of this matter. A mortgagor can benefit from settlement of a potential deficiency judgment by compromising the amount paid to HUD, and also by keeping the actual judgment from becoming a part of the mortgagor's credit record. If amounts are compromised or declared uncollectible (in whole or in part), HUD will file Information Returns (Form 1099-G) with the IRS.

G.Reporting Of Default And Foreclosure Status On The Single Family Default Monitoring System (SFDMS). Effective operation of the deficiency judgment initiative depends upon on the accuracy of the SFDMS data submitted to HUD. This data must reflect the current status of each case. Mortgagees must report reinstatements by using status code "K" for this information to result in deletion of a particular mortgagor from the SFDMS monthly report (See Appendix 20, page 2 of 3). The mere failure to include a case in the report to HUD will not remove that case from the SFDMS database.

9-9INSPECTION, PRESERVATION AND PROTECTION REQUIREMENTS (24 CFR 203.377). The mortgagee is responsible for taking reasonable actions to protect the value of the security until title can be conveyed to HUD. These actions include:

A.Inspections.

1.Definitions. For our purposes, inspections shall be identified as initial, occupancy and vacant. The initial and vacant inspections are required by

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HUD regulations. The occupancy inspection is necessary to determine when foreclosure action must be initiated and when protection and preservation action must be taken if the mortgagee cannot determine the occupancy status by telephone, letter or other means. All inspections must be performed in accordance with HUD's requirements and will be reimbursable when performed as provided in the following paragraphs.

a.Initial. When the mortgage is in default and a payment

is not received within 45 days of the due date and efforts to reach the mortgagor or occupant at least by telephone have been unsuccessful, the mortgagee must perform a visual inspection of the mortgaged property to determine if it has become vacant or abandoned.

(1) During the course of any continuing delinquency, reimbursement will be made for only one "initial inspection". If the mortgagor reinstates and later becomes delinquent, an "initial inspection" may again become necessary and therefore may be also reimbursable as such.

(2) The need to perform a visual inspection is immediate and must not be delayed. The prompt identification of mortgaged properties that are vacant or abandoned is of mutual benefit to both mortgagees and HUD.

(3) This requirement is met when the inspection is performed, not when "ordered".

(4) Prudent servicing dictates that the mortgagee take into consideration the servicing history and prior payment habits of the mortgagor when determining when this inspection should be performed.

(5) Mortgagees may continue to attempt to contact the mortgagor by telephone until the 45th day (while waiting to see if the mortgagor remits his payment) before performing a visual inspection.

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(6) HUD will consider a visual inspection performed no later than the 60th day of delinquency to meet this requirement.

(7) However, where there is a greater risk of vacancy or abandonment, such as for first or second payment defaults, this inspection should not be delayed and optimally should be performed within 45 days from the payment due date.

(8) Mortgagees must accomplish the ordering and

scheduling of inspections in a manner which ensures the inspection will be accomplished according to HUD requirements.

(9) If the mortgagee failed to make an inspection of the property as required, and the property is later found to be vacant and vandalized, the Department will take the position that the damage resulted from the mortgagee's failure to preserve and protect and the claim will be subject to surcharge unless the mortgagee can produce evidence that the damage occurred prior to the date the property became vacant.

b. Occupancy. An occupancy inspection is an additional servicing tool available to a mortgagee to assist in establishing if a property subject to a mortgage in default has become vacant or abandoned.

* (1) If the mortgage remains in default after the initial inspection and the mortgagee is unable to determine the occupancy status by telephone a correspondence on inspection and adequate follow-up must be made within 30 days of the last inspection or follow-up.

* (2) When the conditions necessitating the occupancy inspection continue; within the previous 30 days there have been no payments, no contact with the defaulting mortgagor and increased probability of

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potential abandonment, the mortgagee should consider having a visual inspection performed within thirty days from the date of the last visual inspection.

(3) In performing the occupancy inspection, the servicing mortgagee should require the inspector to establish if the mortgaged property remains occupied and should also require the inspector to attempt to confirm the identity of any occupants.

(4) Prior to having an occupancy inspection performed, the mortgagee must perform at least one valid

follow-up to determine whether the property remains occupied. This follow-up must be documented whether it was by letter, telephone, or means other than an on-site inspection.

(5) During bankruptcy actions, an inspection should not be necessary if the mortgagor is making his payments in accordance with the bankruptcy plan. Usually bankruptcy plans separate pre-petition and post petition payments, requiring the mortgagor to submit his regular payment directly to the mortgagee and pass part of his payment (for payment to his current arrearage) through the bankruptcy court. As long as his regular payment continues to be remitted, an inspection should not be required of a mortgagor in bankruptcy. When payments are not being made as scheduled, either the bankruptcy trustee or the filing attorney should be contacted for information concerning the status of the mortgagor.

(6) Mortgagees may communicate with the HUD Office and/or counseling agency to determine the mortgagor's status while a case is being processed for assignment. For this reason, there should be few cases where an occupancy inspection is warranted and reimbursable while the assignment is being reviewed.

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(7) Inspections are not the only mechanism by which a mortgagee may establish occupancy of a delinquent mortgagor. During the duration of any continuing delinquency, mortgagees must continue to prudently service the mortgage including regular attempts to contact the delinquent mortgagor by telephone and by written correspondence. No delinquency should be allowed to continue indefinitely without some type of contact with the mortgagor.

c. Vacant. Where the mortgage is in default and the mortgagee has established that the mortgaged property is vacant, mortgagees shall inspect the mortgaged property every 25 to 35 days. This is a clarification of the Department's regulatory requirement to inspect vacant properties "at least monthly".

2. Inspection Reimbursement. Included in the Regional Preservation and Protection Guidelines shall be a schedule for inspection reimbursement for each Field Office. Mortgagees must follow these schedules.

a. Generally, reimbursement will be limited to one inspection for each 30-day cycle. This inspection should not be earlier than 25 days from the last inspection or later than 35 days after the last inspection. A distinction must be made between those items which are required and those which are merely recommended. Only where a local HUD Office has identified a need to inspect more frequently, and has made this a requirement, will a mortgagee be reimbursed for these additional inspections.

b. HUD will reimburse mortgagees for occupancy inspections which were performed in accordance with the requirements of this Handbook and are adequately documented including the valid follow-up attempt to confirm occupancy. Please note that required inspections should be performed every thirty days rather than "monthly". We make that distinction as some mortgagees mistakenly believed that an inspection performed on June 1 and an inspection

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performed on July 31 met HUD's intent for "monthly" inspections.

c. If the delinquency is cured, the cost of the inspections may be collected from the mortgagor if; the inspection was required, performed and properly documented. The loan must have been reinstated or paid in full. No inspection costs may be recovered from a mortgagor if the delinquency is continuing. The cost of each inspection must be reasonable and within the cost limitation established by the appropriate local HUD Office. Under no circumstances may the mortgagee charge the mortgagor's escrow account for inspection costs.

d. If there is evidence that the mortgagee knew the mortgagor was still in occupancy, such as documented communication with the mortgagor, counseling agency, the mortgagor's attorney or the local HUD Office, such charges are inappropriate and must not be charged to the mortgagor or included on a claim for insurance benefits.

3. Inspection Requirements. For all inspections, mortgagees shall be required to document the general condition of the property as well as any actions which would be required to adequately protect and preserve the property.

Most of the inspection forms currently used by the industry (i.e., FNMA's inspection form) meet or exceed our requirements. At this time, HUD will not require mortgagees to purchase or use a specific form. However, at a minimum, the following items must be documented on each inspection report.

Judgment should be used in each individual case to determine which specific information to record for these inspections. Of course, where the property is occupied, some of the items listed would be identified as not applicable (n/a).

Date of the inspection.
Identity of the inspector.
Is the property occupied?
Is the house locked?
Is the grass mowed and/or shrubs trimmed?

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Is there any apparent damage?
Is any exterior glass broken?
Are there any apparent roof leaks?
Does the house contain personal property and/or debris?
Are any doors or windows boarded?
Is the house winterized?
Are there any repairs necessary to adequately preserve and protect the property?

Proper documentation must be maintained by the mortgagee on the performance of inspections and follow-up activities. HUD defines proper documentation, for the purposes of reimbursement, as copies of all completed inspection forms and accompanying follow-up documentation for occupancy inspections, which shall be available for verification and shall be maintained in each claim review file for which reimbursement is being sought.

B. Preservation And Protection Actions. Once the mortgagee has determined that the property is vacant or has been abandoned, the mortgagee must take all reasonable action short of illegal trespass, to secure the property and protect it from damage from the elements and from vandalism. If the mortgage was insured on or after January 1, 1977, HUD may refuse to accept title or the mortgagee's claim will be surcharged for costs associated with

damage caused by the mortgagee's failure to meet this responsibility.

The mortgagee is expected to comply with all requirements set forth by the Local HUD Office for the preservation and protection of insured properties. Many requirements are specific to a local jurisdiction. HUD's Regional Office shall be responsible for annually updating and furnishing the schedules to mortgagees. Consult the specific Regional Office to request an updated schedule.

Key requirements for preservation and protection are as follows:

1. Initiate foreclosure within 9 months after the date of default or within 120 days after the date the property became vacant is discovered vacant, or

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should have been discovered to be vacant, whichever is earlier.

2. Secure windows and doors according to Regional guidelines to prevent unauthorized entry. Boarding up of properties must not be done without prior HUD approval.

3. In accordance with Regional guidelines, protect plumbing and other operating systems against damage by freezing.

4. Unless specifically exempted by the local HUD Office, mortgagees shall remove debris (interior and exterior). Costs limits will be established and provided in Regional guidelines. Prior written approval must be obtained from the local HUD Office to exceed the limit established for the local jurisdiction.

5. In accordance with the Regional guidelines, mow lawns, maintain shrubs and perform snow removal. If circumstances are such that maintenance should be performed more frequently than as identified in the Regional guidelines, mortgagees must obtain prior written approval from the local HUD Office authorizing the additional expense.

6. Unless required by Regional guidelines, mortgagees must not post signs or take other actions that might call attention to the fact that the property is vacant. Some local HUD Offices may require that signs be posted, but these will normally be restricted to areas where boarding of openings is deemed necessary and to properties that have been boarded.

C.Preservation And Protection Reimbursement. Any expense which exceeds the local cost limits or the total cost limit of \$500 requires prior approval from the local HUD Office. The cost of required inspections and utilities (for only those areas where HUD has required they be left on) are not included in this maximum. However, all expenses must be supported by receipts, and only amounts which fall within allowable local cost limits (or which prior written approval has been obtained) may be claimed for reimbursement.

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1.If a mortgagee elects as a matter of convenience to obtain services at a cost higher than the allowable limits, the excess costs will not be reimbursed by HUD.

2.The mortgagee must maintain receipts for all costs incurred for preservation and protection of insured properties. HUD reserves the right to require reimbursement of any costs included on an insurance claim that are not adequately supported.

3.The cost of inspections on occupied properties may be reimbursed only if the mortgagee has documented the attempted written or telephone contacts. There must be adequate documentation to demonstrate that the mortgagor or occupant could not be contacted by any other means.

D.Swimming Pools. Swimming pools may create both liability on the part of the mortgagee and maintenance expenses.

1.Liability Insurance. HUD will not reimburse mortgagees for the cost of insurance against potential liability arising from swimming pools. Whether to purchase such insurance is the mortgagee's decision.

2.Maintenance. HUD will only reimburse the mortgagee for the expense of maintaining a swimming pool if prior HUD approval is obtained. This approval may be provided in the appropriate cost schedule or provided on a case-by-case basis. In either case the following requirements must be met:

a.the pool was installed and functioning when the mortgage was insured; and

b.the facility with all of its appurtenances will be conveyed to the Secretary unencumbered; and

c.the preservation and protection activities of the mortgagee are required to comply with health and safety

requirements imposed by law; and

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d. HUD determines that the amenities have a potential to add sufficiently to the recovery to warrant reimbursement.

E. Timing Of Protection And Preservation Action. The mortgagee is required to protect and preserve the property until its conveyance to the Commissioner. No claim for reimbursement shall be made to the Commissioner for protection and preservation services performed after conveyance unless it has been approved by the local HUD Office.

9-10 CONDITION OF PROPERTIES (24 CFR 203.379).

A. Mortgagee Certification. Unless prior approval has
* been given to accept the property in a damaged condition,
the mortgagee must certify that, as of the date
of filing the deed for record, the property is: *

1. undamaged by fire, flood, earthquake, hurricane or tornado;
and

2. with regard to mortgages insured (or for which commitments to insure were issued) on or after January 1, 1977, the property is undamaged due to failure of the mortgagee to take reasonable action to protect, preserve and inspect the property (24 CFR 203.380).

3. As to mortgages insured under firm commitments issued on or after November 19, 1992, or under Direct Endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, undamaged while the property was in the possession of the mortgagee.

B. Conveyance Of Damaged Properties. Generally, all properties conveyed to HUD must be undamaged by fire, flood, earthquake, tornado or failure to preserve and protect. There are exceptions which include:

1. Conveyance of Damaged Properties with HUD Approval.

a. The HUD Field Office having jurisdiction may agree to accept damaged properties, at the mortgagee's request.

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b.The mortgagee's written request to HUD for such a conveyance must include:

- (1)a full description of the circumstances;
- (2)the reason the mortgagee does not wish to make repairs;
- (3)an estimate by the mortgagee of the cost of repairs; and
- (4)the amount of the insurance recovery, if any.

c.Under this provision, HUD will reduce the claim by the amount of insurance recovery or HUD's estimate of the cost of repairs, whichever is greater.

d.The mortgagee must retain a copy of HUD's approval in the mortgagee's claim review file for a period of three (3) years from the date of final settlement of the claim.

e.The mortgagee must obtain prior written approval from the appropriate HUD Field Office.

2.Conveyance of Fire Damaged Properties (24 CFR 203.379(a)(2)). If the property has been damaged by fire and the property was not covered by fire insurance at the time of the damage, or the amount of the insurance coverage is inadequate to repair fully the damage HUD will accept conveyance without prior approval provided that the mortgagee has satisfactorily met all regulatory requirements. The mortgagee must so certify that the following requirements have been met when the claim for insurance benefits is filed. A copy of the certification should also be attached to the copy of the claim for insurance benefits that you send to the HUD Field Office.

a.At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100% of the insurable value of the improvements or the principal loan balance of the mortgage; and

b.The insurer later canceled this coverage or refused to renew it for reasons other than nonpayment of premium; and

c.The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount described in item (a) above, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

d.The extent of coverage obtained by the mortgagee in accordance with item (c) of this section was the greatest available at a reasonable rate, (See Chapter 2, Paragraph 2-11C for information about "Reasonable Rate") or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

e.The mortgagee took all required actions to preserve and protect the property (24 CFR 203.377).

Any insurance benefits received must be applied to reduce the claim. Under these special circumstances, the reduction to the claim will be limited to the amount of insurance recovery.

Guidance concerning the unavailability or reductions in hazard insurance coverage is discussed in Chapter 2, Paragraph 2-8.

C.Other Damage. If a property is damaged by other than fire, flood, earthquake, tornado, or boiler explosion, and the mortgagee does not believe that the damage resulted from a failure to take required actions to inspect, protect and preserve the property, the mortgagee must:

1.Identify such damage in the mortgagee's comment section of Form HUD-27011 Part A; and

2.Provide to the local HUD Office copies of all documentation necessary to verify that the mortgagee met its requirement to take reasonable action

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to inspect, protect and preserve the property. All

documents must identify the specific case by FHA case numbers.

3. In the event a property is conveyed damaged, but is not identified as such on the claim form, no further reimbursement will be made until the local HUD Office has made an evaluation of mortgagee responsibility.

D. Notice Of Damage. HUD is deferring implementation of the notification requirement identified in the new paragraph 203.379(b) (damage by events "other" than:

1.24 CFR 203.378(c)(1) [fire, flood, earthquake or tornado];
or,

2.24 CFR 203.378(c)(2) [failure to preserve and protect the insured property if the property was insured on or after January 1, 1977].

The new requirement would affect those mortgages insured under a Firm Commitment issued on or after November 19, 1992, or under Direct Endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992.

HUD will issue implementing procedures for the new requirement of 24 CFR 203.379(b) in the future. Until that time, mortgagees shall continue to follow the requirements of Paragraph 9-10B with regard to Unrepaired Conveyance.

E. Hazard Insurance Recovery. In many circumstances, hazard insurance proceeds remain unclaimed because the mortgagee failed to timely file his claim with the insurance carrier.

1. The mortgagee is expected to take all appropriate action to recoup all available hazard insurance proceeds.

2. Where completion of an action jeopardizes the mortgagee's ability to receive hazard insurance proceeds (such as conveyance of title to HUD), the mortgagee shall request an extension of time from the local HUD Office and with this request provide

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HUD with a specific reason the extension is warranted.

a. If there is evidence of vandalism or theft resulting in damage or missing built-in appliances, air conditioning units, furnaces, water heaters, plumbing fixtures, etc,

the mortgagee should file a claim with the mortgagor's insurance carrier and obtain all available insurance proceeds for damages to the property. Mortgagees are not required to have mortgagors obtain insurance for this type of coverage, however, if the existing policy covers loss or damage to these items (and many do), a claim must be filed to cover the loss. Mortgagees should have documentation to indicate their attempt to recover the hazard insurance proceeds.

b.If insurance coverage was available for these types of losses, mortgagees will not be held accountable for vandalism or theft. Mortgagees will be held accountable, however, if the loss was due to their failure to properly inspect, protect and preserve the property.

F.HUD Acceptance Of Responsibility. On the date the deed to the Secretary is filed for record, HUD assumes full responsibility for all expenditures for repairs, winterization, property clean-up and other miscellaneous expenses. The mortgagee or his agent must forward all keys to the property to the appropriate HUD Field Office with the copy of the Claim for Insurance Benefits, Form HUD-27011, Part A.

1.Mortgagees must perform inspections every 30 days in accordance with the requirements set forth in Paragraph 9-9. Damage discovered during HUD's first inspection of the property after conveyance may be presumed to have occurred while the mortgagee had possession unless the mortgagee is able to provide evidence to the contrary.

2.The mortgagee must not incur expenses for protection and preservation of the property, or for eviction of occupants, on or after the date the deed is filed for record and the claim for mortgage insurance benefits is filed without the express

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written approval of the Local HUD Office. Expenses for work done before the deed is filed for record may be paid after that date.

G.Property Damage And Restoration. The condition of a property at conveyance is the responsibility of the mortgagee. (See also Paragraph 9-10B.) HUD will not normally inspect damages or repairs until a claim and conveyance are imminent. An exception to this general rule is when the mortgagee has requested permission to convey title without repairing the damage.

After repairs have been completed and the mortgagee is satisfied that they are adequate, the mortgagee may (at its option) ask for assurance that the repairs are acceptable to HUD so that a later claim for mortgage insurance benefits will not be surcharged because of the damage. The following procedure applies to such requests:

1. Contact the Loan Management Branch of the local HUD Field Office having jurisdiction over the property when the repairs have been completed to the mortgagee's satisfaction. That office will arrange for assignment of a member of the Fee Inspection Panel and the mortgagee will be notified of the assignment.

2. The mortgagee assumes full responsibility for payment of the inspection fee, which may not be passed on to the mortgagor or included in a later claim for insurance benefits.

3. Send the inspector's completed report (on Form HUD-92051, (Appendix 39) to the HUD Field Office having jurisdiction over the property, where it is counter-signed before the original is returned to the mortgagee. The inspection report of the fee inspector should attest that he is a duly qualified member of the Field Office Panel.

4. Retain a copy of the signed report in the mortgagee's files.

NOTE: If the report documents that the repairs are satisfactory, it represents HUD's assurance that the claim will not be surcharged for the damage.

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9-11OCCUPANCY (24 CFR 203.381). On the date the deed is filed for record, the mortgagee must certify that the property is vacant and free of personal property unless HUD has agreed to accept title with the property occupied. This, and the procedures described below, apply whether title is acquired by foreclosure or by deed-in-lieu of foreclosure. Title may not be conveyed until the following actions have been completed:

A. Notify Mortgagor And Occupants. At least 60 days, but not more than 90 days before the mortgagee reasonably expects to acquire title (or within 10 days after learning that title will be acquired by deed-in-lieu of foreclosure), the mortgagee must notify the mortgagor and each head of household who is actually occupying a unit of the property of its pending acquisition by HUD.

This notice must be sent whether the property is occupied or vacant. The 60-to-90 days requirement must be timed to expire

with the redemption period. The notification must be sent by regular mail, although an additional copy may be sent by other means. On the same date a copy must be sent to the local HUD Office with jurisdiction. On that copy the mortgagee must include its HUD Mortgagee Approval Identification Number, the approximate date of the foreclosure sale or of the anticipated acquisition by deed-in-lieu of foreclosure and the date of expiration of any redemption period.

B. Form Of Notice. The notification referred to above is in five parts, all of which are in Appendix 40. The forms and the wording of the notice must remain unchanged, although reformatting, except for Attachments #2 and #3, may occur to meet the mortgagee's requirements. If, after HUD has been notified, it is learned that title will not be acquired for any reason, HUD and the occupants must again be notified immediately.

C. Conveyance. If an occupant contacts HUD within 20 days of the date of the mortgagee's notice, requesting to remain in the property, HUD will notify the mortgagee. If the mortgagee has not received such notification within 45 days after sending the notices discussed above, the mortgagee shall convey the property vacant, unless otherwise directed by the local HUD Office.

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If HUD approves occupied conveyance, the mortgagee must note the date of HUD's approval letter in Item 23 of Form HUD-27011 (Appendix 6). If the mortgagee is notified that HUD is considering a request for occupied conveyance, but 90 days have elapsed since the notices discussed above were sent and there has been no final decision from HUD, the mortgagee may convey title with the property occupied. The mortgagee must advise HUD by separate letter of the occupied conveyance and must enter in Item 23 of Form HUD-27011 the date of the 90th calendar day after the date of the mortgagee's notification letter to the occupant.

D. Occupied conveyance may be permitted where a tenant is making regular monthly payments to the mortgagor and state or local law prohibits eviction for this or other similar reasons beyond the control of the mortgagee. Occupied conveyance may also be permitted where state or local law requires the payment of excessive eviction or relocation expenses as part of the eviction process. In any of these situations, mortgagees must notify the local HUD Field Office for additional guidance.

9-12 CLAIM FOR INSURANCE BENEFITS-WITH CONVEYANCE OF TITLE. Mortgagees must follow outstanding claim instructions for the preparation and submission of their claims for insurance benefits (Form HUD-27011). Following are a few important points relating to hazard insurance and taxes.

A.Cancellation Of Hazard Insurance. The mortgagee must request the hazard insurance be canceled as of the date the deed is filed for record. The amount of the return premium due the mortgagee may be calculated on a "short-rate" basis (24 CFR 203.382).

B.Taxes--Prior To Conveyance. The mortgagee must obtain and pay all available tax bills prior to conveyance. This applies regardless of whether the taxes are due before or after conveyance. Attach copies of the last tax bills paid (to all appropriate taxing authorities) to the claim you send to the local HUD Office. A copy of the tax bill, a copy of the disbursement document, or other types of information, as long as it indicates that the tax payment was paid or sent for payment is acceptable.

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C.Taxes--After Conveyance. Forward to the HUD Office for payment any tax bills received after you convey the property to HUD.

D.Tax Penalties. Tax penalties incurred by HUD as a result of the failure of the mortgagee to pay taxes prior to conveyance must be reimbursed by the mortgagee.

9-13TITLE REQUIREMENTS (24 CFR 203.389). Title conveyed to the Secretary must be good and marketable. Certain specific and common exceptions to title that will not cause objection are listed in the regulation, and local HUD Offices may waive additional objections, based on local practice and the general marketability of title clouded by those objections. In some cases, title exceptions may be waived even if they impact on marketability if the mortgagee is willing to accept a reduced claim for mortgage insurance benefits.

A.Secondary Liens. Generally, no junior liens may pertain when title is conveyed, either by deed-in-lieu of foreclosure or as the result of foreclosure. HUD will, however, accept title subject to a junior lien securing the repayment of Section 235 assistance payments.

B.Other Liens. HUD will not object to title where there is a lien in favor of the Internal Revenue Service (IRS), regardless of its position, if the following conditions are met:

- 1.IRS has been notified of the foreclosure;
- 2.the IRS lien was established after the date of the mortgage lien; and
- 3.the mortgagee bid at least the full amount of the indebtedness plus the cost of foreclosure (this precludes

the mortgagee's option to convey title using any variation of the Claims Without Conveyance of Title procedure if there is an IRS lien).

9-14RECONVEYANCE OF A PROPERTY TO THE MORTGAGEE (24 CFR 203.363). If a mortgagee fails to comply with HUD's conveyance regulations, HUD may reconvey title to the mortgagee. Under these conditions, HUD will cancel the claim for insurance benefits. HUD will require reimbursement

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for expenses incurred regarding acquisition, holding and reconveyance, less any income received from the property. The time covered will be from the date the deed to HUD was filed for record to the date of reconveyance, less any income received from the property.

For mortgages insured under firm commitments issued on or after November 19, 1992, or under Direct Endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, the mortgagee may reapply for insurance benefits but will not be reimbursed for any expenses incurred in connection with the property after it has been reconveyed by the Secretary or paid any debenture interest occurring after the date of the initial conveyance or after the date conveyance was required by paragraph 9-3 A4 (24 CFR 203.359) whichever is earlier, and there will be deducted from the insurance benefits any reduction in HUD's estimate of the value of the property occurring from the time of reconveyance to the time of reapplication.

9-15MORTGAGEE'S WITHDRAWAL OF APPLICATION FOR INSURANCE BENEFITS (24 CFR 203.362). A mortgagee must apply in writing to HUD for consent to withdraw; but, the mortgagee must itself agree to:

- A. accept reconveyance of the property;
- B. promptly file a reconveyance for record;
- C. accept the title evidence it furnished to HUD; and
- D. reimburse HUD for expenses incurred (203.362 and 203.364).

9-16CLAIM FOR INSURANCE BENEFITS REVIEW FILE AND RETENTION OF CLAIM RELATED RECORDS.

A. Each mortgagee must maintain a claim review file of complete records on each mortgage for which a claim for insurance benefits is submitted.

B. Each claim review file must be retained for at least three (3) years after final or the latest supplemental claim settlement.

(See Paragraphs 10-17 and 10-34 for Section 235 mortgages and see Paragraph 1-4E for retaining all servicing files with HUD.)

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1. "Final settlement date" is the date of the last acknowledgement or check received by the mortgagee in response to submission of a claim. In certain cases, the acknowledgement may be in the form of a bill.

2. "Supplemental settlement date" is the date of the final payment or acknowledgement of such supplemental claim. In certain cases, the acknowledgement may be in the form of a bill.

C. Microfilm records are acceptable to HUD provided a legible hard copy can be produced within 24 hours of HUD's request.

9-17 MORTGAGEE MONITORING.

A. HUD will monitor mortgagees on-site or request selected files be forwarded for review with respect to paid claims for insurance benefits. This will include internal reviews of such items as costs expended and the verification of claim data.

B. Mortgagees may be required at any time within three years of final or supplemental settlement to produce evidence in support of a claim.

C. Mortgagees Are Reminded Of Their Responsibility To Properly Service And Follow HUD's Outstanding Claim Instructions. Where the Department finds non-compliance, appropriate action will be taken against the mortgagee. Such action may include the withholding of debenture interest and other administrative sanctions.
