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	Tax Payments and Escrow Analysis, SFMNS 85-35	
	Inactive Status, Sample Letter	
HUD-2210	Approval of Purchaser and Release of Seller	2502-0036

	Forbearance Plan, No Lump-Sum Payment	
	Forbearance Plan, Lump Sum Payment	
	Forbearance Plan, Escrow Deficiency Only	
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HUD-698	Statement of Account	

U.S. Department of Housing and Urban Development

HOUSING

Special Attention of: Regional Administrators
-Regional Housing Commissioners,
Directors of Housing, Managers,
Directors of Housing Management Divisions,
Loan Management Branch Chiefs, Single
Family Secretary-Held Mortgage Staff Members.

Transmittal Handbook No.:
4335.2 REV.

Issued: September 26, 1986

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1. This Transmits Handbook 4335.2 REV., Secretary-Held Servicing Handbook, Chapters 1-8.
 2. Explanation of Materials Transmitted: This Handbook represents a thorough rewrite of the basic instructions used in the servicing of Single Family Secretary-held mortgages. It incorporates supplemental issuances which were meant to clarify policy in this fast-growing area since the issuance of the original handbook in 1969.

While much of the Secretary-held mortgage portfolio is represented by what the private sector would define as exceptional cases, we have attempted to structure the Handbook so that it addresses "normal" mortgage servicing first and progresses towards those areas of special concern.

Chapters 1 and 2 introduce the servicer to the Handbook; define responsibilities; and, speak to the characteristics of the portfolio.

Chapter 3 deals with those "routine" matters which any mortgagee would need to address in dealing with its portfolio. It presents those procedures which are the Department's way of addressing generic issues.

Chapters 4, 5, and 6 are designed to define the sequential approach towards dealing first with the delinquent mortgage and then, if problems cannot be rectified, with foreclosure and bankruptcy.

Chapter 7 is reserved for Section 235 Recapture Mortgages. This Chapter will be issued at a later date. Meanwhile, the instructions included in Attachment A to the January 6, 1986, Redelegation of Authority apply.

Chapter 8 addresses the issue of servicing mortgages with "Buy-down" agreements.

Each of the chapters are, for the most part, designed to stand alone. Within each are incorporated necessary supplements in the form of Exhibits. This, it is hoped, will facilitate more rapid amendment of the procedures as it becomes necessary.

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3. An Invitation to Participate. The dynamics of mortgage servicing are such that changes to this Handbook will be

needed. We believe that the "front line" users of this Handbook can offer valued guidance, based on experience, needed for future revisions. Please provide the Director, Single Family Servicing Division (HSSL), with any recommendations.

4. Filing Instructions. This Handbook supercedes earlier editions of the same number.

General Deputy Assistant Secretary
for Housing-Federal Housing Commissioner

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Handbook 4335.2 REV.

U.S. Department of Housing and Urban Development
Washington, D.C. 20410

Departmental

Staff

September 1986

Secretary-Held Servicing

Handbook

HSS: Distribution W-2(H), W-3(H), WK-3(ADM),
W-2(P), W-2(OGC), W-2(Z), W-3(ZAS), W-3(ZAOO),
W-3-1, W-4(H), R-1, R-2, R-3, R-3-1(H),
R-3-1(RC), R-6, R-6-1, R-6-2, R-7, R-7-1, R-7-2,
R-8, R-8-1,

CHAPTER 1 - INTRODUCTION

- 1-1. HOW TO USE THIS HANDBOOK. This handbook is a guide to be adapted, where necessary, to local legal requirements. If further direction or specific authorization is needed, field offices should contact the Single Family Servicing Division (HSSL) in Headquarters.

Chapter 3 covers situations common to all mortgages regardless of their status of collections, payment of taxes, etc. Subsequent chapters address situations that may evolve from a delinquency and, finally, unique situations such as recapture of subsidy.

- 1-2. AUTHORITIES AND RESPONSIBILITIES.

- A. Authorities. All Housing program authority stems from the Assistant Secretary for Housing - Federal Housing Commissioner, then through the Office of Single Family Housing. Except as specified in this handbook and supplements, authority not delegated to the field office resides in Headquarters.

Headquarters may, from time to time, increase or withdraw field office authority. If a field office needs increased authority or responsibility to deal with local situations or issues, it must request Headquarters approval.

- B. Support Services. These are specific services provided Housing by organizations not under Housing's authority. They include:

1) Office of Finance and Accounting (OFA).

- a. Post Insurance Division (AFMP), OFA. This division has final responsibility for maintaining the financial controls over individual cases in the Secretary Held Mortgage (SHM) portfolio. Field offices have terminals to access the automated Single Family Mortgage Notes System (SFMNS) for quick reference to an individual account's status. Field offices may also access the system for administrative purposes-such as name and address changes and payment plan modifications; but accounting functions are AFMP's responsibility.

In AFMP, the Single Family Notes Branch is responsible for all financial actions on individual accounts. Specific inquiries on those accounts should be addressed to the "Service Center", a Section within that Branch.

- b. Regional Accounting Division (RAD), OFA. The RAD is the field arm of OFA. Field offices will contact the RAD primarily for payment of real estate taxes and special assessments on SHM accounts. Once disbursements are made, it is the RAD's responsibility to notify AFMP to update the account.
- 2) The Single Family Mortgage Notes System (SFMNS). The SFMNS is a contracted system providing automated mortgage accounting and servicing. It is supported by a lock box facility solely for processing mortgage payments. This system is under OFA's Systems and Management Oversight Division (AFM). (See the SFMNS User's Guide and related memoranda for guidelines for the SFMNS.)
- 3) Office of General Counsel (OGC). The OGC is represented in the field by staff attorney-advisors, who should be contacted about legal issues specific to the jurisdiction.

The Assistant General Counsel for Home Mortgage Insurance (GHH) handles all SHM questions that cannot be answered by local attorney-advisors. GHH will be involved in coordinating the foreclosure of SHM mortgages and administration of the national contract for the services of foreclosure attorneys or agents. All contacts with the foreclosing agent and attorneys must be coordinated through GHH, except as otherwise specified.

When cases have not already been referred to GHH for foreclosure, but the services of counsel are necessary (deeds-in-lieu of foreclosure, bankruptcies, etc.), those cases should be referred to Regional/Chief Counsel.

- C. Field Office Delegations. Field office organization patterns differ generally below the Housing Management Division level. All delegations of authority to the field by Headquarters are published in the Federal Register. The Redefinition of Authority is included as Exhibit 1-1. Operating guidance, such as this handbook, are designed to explain those delegations.

The delegations are:

- 1) Housing Management Director. Authority for the following responsibilities should not be delegated below the position of Director, Housing Management Division:
 - a. Authority to compromise and settle claims against mortgagors.
 - b. Authority to execute releases/satisfactions and

assignments.

- 2) Chief, Loan Management; Chief, Loan Management and Property Disposition; Supervisory Loan Specialist. Authority for the following responsibilities may be delegated to the foregoing positions:
 - a. Authority to approve forbearance agreements.
 - b. Authority to issue statements of accounts, including payoff and bring-current amounts.
 - c. Authority to accept partial payments and payments in full.
 - d. Authority to accept deeds-in-lieu of foreclosure.

D. Field Office Responsibilities and Limitations

- 1) Maintenance of Legal File. The mortgage security instruments and legal files were decentralized to the individual office's Housing Management Division Directors as part of the redelegation. However, the responsibility of securing and protecting those files rests with the office's Administrative Officer.
- 2) Satisfaction of Liens. Once the Satisfaction of Lien has been prepared by the Field Counsel, it will be returned to your office and should be executed by the authorized signing official. The document must then be notarized by a bonded notary in accordance with the notary laws in your State. The Satisfaction of Lien must be recorded, following local practice, and forwarded to the mortgagor or mortgagor's agent, as appropriate. (see also instructions in this Handbook on Payoffs.)

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- a. After sufficient payoff funds have been credited to the mortgagor's account in SFMNS, OFA will complete financial transactions and enter Status Code 56 (loan paid off) on Loan Screen 1. A memorandum to verify completion of financial transactions will be sent to the Chief, Loan Management Branch. This memorandum also will indicate if there is a refund in process or if any outstanding taxes have not yet been posted to the account. OFA will inform the mortgagor when a refund is forthcoming. Neither taxes in process nor a mortgagor refund affects continuation of satisfaction processing.
 - b. After the financial processing has been completed by OFA, Field Loan Management staff will request field counsel to

prepare the release of deed of trust or satisfaction of mortgage.

- c. Upon receipt of the release, Loan Management staff will record the satisfaction, release of deed, etc. All legal documents should be transmitted to the mortgagor or mortgagor's agent, as appropriate, by certified mail.

- 3) Satisfaction of Section 235 Recapture Liens. Directors, Office of Housing must assure that all staff responsible for processing Section 235 recapture liens have received a copy of the instruction contained in the January 6, 1986 redelegation. Those instructions will be included as Chapter 7. Until the revised chapter is available, continue to follow the instructions and guidelines set forth in the following memorandums, except where changed as a result of the redelegation:

- February 9, 1984, Documentation Require to Satisfy Section 235 Recapture Liens
- May 22, 1984, Section 235 Recapture of Assistance Payment Reasonable Costs of Sale and Improvements
- December 11, 1984, Satisfaction of Section 235 Recapture Liens Involving Deeds-in-lieu of Foreclosure

request copies of these memoranda from the Single Family Servicing Division, Office of Insured Single Family Housing.

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- 4) Acceptance of reduced payoff amounts, waiving delinquent interest and compromising and settling claims. Shortages involving a mortgage payoff must not be written off on a routine basis. Decisions to write off must follow guidelines at 3-8.
- 5) In the case of an assumption of the mortgage, neither HUD nor field staff has legal authority to waive any part of a continuing indebtedness. Field offices cannot write off any amounts prior to mortgage payoff.

- D. Staffing. Field office managers must assure that staff assigned to debt collection are adequately trained and given the opportunity for any required professional improvement.

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CHAPTER 2 - CHARACTERISTICS OF THE SECRETARY-HELD MORTGAGE (SHM)

- 2-1. GENERAL. HUD's SHM portfolio consists of mortgages that have either been assigned to HUD or are direct loans from HUD (known as purchase money mortgages-PMM). In both cases HUD is the mortgagee.

HUD's rights and responsibilities are limited by the mortgage or deed-of-trust, good business practice, and specific policies and procedures in this handbook and supplements.

Basic mortgage servicing elements covered in this chapter apply to all first mortgages, including SHM's, regardless of any delinquency.

2-2. BASIC DEFINITIONS.

- A. Note: An agreement under which terms a lender will advance money to a borrower for given use and with a specified plan for repayment.
- B. Mortgage: (This term will be used generally throughout the text and includes other variants such as deeds-of-trust) the note security which provides for recovery of the loan proceeds through sale of the property if the borrower defaults.
- C. Lien: A charge on the property, i.e. the right to collect money from the sale of the property.
 - 1) Priority: Generally a lien's priority is established by the date and time the lien is legally recorded regardless of which loan was made first.
 - 2) Exceptions: Liens for taxes, and in certain States other types of liens (mechanics, etc.), may advance to a first position regardless of their date of record.
- D. Mortgage Servicing is the management and procedures for collecting payments owed by mortgagor to a lender. For Secretary-held mortgages, HUD is the lender.
 - 1) Debt Collection. The aim is to collect the debt in an orderly manner so that HUD recovers its investment while the borrower achieves homeownership. Workout of the debt is a viable alternative to foreclosure. Some techniques are discussed in Chapter 4, Servicing the Delinquent Mortgage.

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- 2) Counseling. Counseling can often help the mortgagor reduce

expenses, increase income or improve budgeting. The servicer is not usually expected to act as a counselor; there are agencies that can help the mortgagor search for jobs, find child care, or secure supplementary assistance. Counseling services are discussed in Chapter 4.

- 2-3. TYPES OF MORTGAGES. Mortgages are best categorized by their priority position. Most mortgages in HUD's portfolio are first mortgages securing a loan made to purchase the property. To a lesser extent HUD holds subordinate mortgages that secure other interests--the major class are Section 235 recapture mortgages.

The first nine digits associated with a case are the actual case number and define the office jurisdiction and the numerical sequence of the application for insurance. On recent cases, reading from left to right, a tenth (check) digit has been added for data processing purposes only. The Single Family Mortgage Notes System, discussed later, accommodates this tenth digit but it is not relevant to this discussion.

To differentiate between an assigned mortgage and a PMM, look at the last four (suffix) digits in the FHA case number. If the suffix starts with a "3", it is assigned; if it starts with a "0" it is a PMM. This, fourth from the right digit, is only used on Secretary-Held Mortgages. For example:

_____ a "check" digit may be included here
/
243-987654-3235
/
_____ assigned mortgage
field office
jurisdiction

143-123456-0203
/
_____ PMM

- 2-4. MORTGAGE SUBGROUPS. The last three digits in an FHA case number's suffix will indicate the section of the National Housing Act under which they were originally insured and whether the mortgage/note calls for repayment of the loan in equal installments, in variable installments, or if part of the equal installments are subsidized. Example:

262-024680-3221
_____ Mortgage Subgroup

(See Form HUD-428, Home Mortgage APD Code Chart in Exhibit 2-1 for a list of subgroups.)

- A. Equal Installments. Most mortgages in this category bear suffixes such as: 203, 221, etc. They also include mortgages with "buy-down" provisions.
- B. Equal Installments Subject to Subsidy. The suffixes, generally, would be: 235, 256, 265, 256, etc.
- C. Variable Installments. This grouping encompasses a wide variety of loans. They are relatively new in the mortgage market, and complex. Examples are:
 - 1) Graduated Payment Mortgages (GPM). (suffixes 270, etc.) allow the borrower, during the initial years following loan origination, to pay less than that which is necessary to repay the loan in equal installments. The difference is added to the loan balance (negative amortization). However, each year, for a given number of years, the monthly payment increases to compensate for lower initial payments.
 - 2) Growing Equity Mortgages (GEMs). (suffixes 243, 242, etc.) require borrowers to make payments higher than necessary to pay the loan off in equal installments. The additional payments increase annually and are applied to principal and shorten the time to pay off the original loan. The result is that the lender's income (yield) substantially increases. The GEM formalizes, by contract, what any borrower can do by making incremental prepayments to the loan's remaining principal.
 - 3) Adjustable Rate Mortgages (ARMs). (suffixes 229, 529, 729, 230, 530, 730, 231, 531, 731) require that the rate of interest charged on the principal owed under the mortgage be tied to some independent source which, in the case of HUD-insured mortgages, is the weekly average interest rate on United States Treasury Securities adjusted to a constant maturity of one year. This assures that the lender's percentage return on investment is stabilized despite wide variations in its cost of money. Both upward and downward changes are limited and the total number of installments will not change regardless of increases or decreases in the installment payment.

-
- 2-5. CHANGING THE MORTGAGE REQUIREMENTS. As noted in Paragraph 2-1 the mortgage establishes rights and responsibilities of the lender and borrower. These specific requirements must be formally amended by mutual agreement if the change adversely affects one of the parties' rights. Such formal changes are often referred to as recasting of the mortgage or replacement (novation) of the mortgage.
 - A. HUD will not recast or replace a mortgage, since doing so can adversely affect the priority of the lien.

B. HUD does allow informal changes, since these are made "subject to the mortgage" and therefore do not change the mortgage or affect the priority of the lien. (The most prevalent example is forbearance agreements, discussed in Chapter 4.)

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Exhibit 2-1.1

Home Mortgage ADP

Code Chart

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*      GRAPHICS  MATERIAL  IN  ORIGINAL  DOCUMENT  OMITTED
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Exhibit 2-1.2

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* GRAPHICS MATERIAL IN ORIGINAL DOCUMENT OMITTED *
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CHAPTER 3 - ROUTINE SERVICING

3-1. GENERAL. HUD's objective is to ensure orderly pay-off of the loan so the borrower can achieve debt-free homeownership. Not all loan installments will be paid in a timely manner and it may take innovative efforts to restore the mortgage to a current status. This goal requires effective controls that include but are not limited to, organization and record-keeping.

A. Organization. The staff that deals with the SHM portfolio is generally in the Loan Management Branch.

- 1) The decisions on workload distribution rest with field office management, using the following guidelines:
 - a. Lines of authority must be clearly understood by all staff.
 - b. Workload distribution must reflect the fact that cash collection goals associated with the SHM portfolio are among the highest of the Department - and depend on adequate numbers and skill of staff.
- 2) Various offices achieve good results by different means; often supported by generalist cross-training in SHM and insured servicing. Types of distribution are:
 - a. geographic distribution of workload
 - b. alphabetical distribution of cases
 - c. procedural assignments -
 - default servicing
 - foreclosure
 - escrow functions
 - section 235
 - mortgagee reviews

B. Record-keeping.

- 1) Automated. A large part of day-to-day record-keeping is done by the SFMNS as it constantly updates mortgagor account records to show receipts, disbursements and the status of individual cases. From this data comes general portfolio data.

Record-keeping also includes putting new data into the SFMNS, as described in the SFMNS User's Guide.

- 2) Manual. Some record-keeping, such as the recordation of collection activities, cannot be done in the SFMNS must be done manually. Such records must be complete and accurate so that at a later date, if necessary, a complete chronology of HUD's servicing can be compiled.

3-2. IDENTIFYING AND ESTABLISHING THE INITIAL LOAN SET-UP

The requirements for establishing various mortgage accounts follow:

NOTE: Instructions for the initial establishment of all accounts in the SFMNS are in the System User's Guide.

A. Assignments Accepted Under the Assignment Program

- 1) The field office must establish the account in the automated SFMNS when the assignment acceptance letter is issued.
- 2) When Form [HUD-27011](#), Single Family Application for Insurance Benefits, Exhibit 3-1, and required attachments are received, the SFMNS must be updated to include tax information and verification of paid-through dates. Any changes to the financial data must be brought to the attention of OFA for correction.

B. Purchase Money Mortgages (PMM). When HUD grants a PMM on the sale of HUD-held property, the Property Disposition Section will give the Loan Management Section the documentation required to establish the mortgage(s) in the SFMNS.

C. Automatic Assignment of Mortgages Pursuant to Section 221(g)(4) of the National Housing Act.

- 1) Mortgagees have the option of assigning FHA Section 221 mortgages to HUD in the 21st amortization year when such mortgages are not in default at the end of 20 years from the date the mortgage was endorsed for insurance. However, any mortgage for which a commitment to insure was issued on or after November 30, 1983, is not eligible for this option.
- 2) Mortgagees must notify the field office at least 30 days before the intended date of assignment. Notification must include sufficient information to allow entry of the account in the SFMNS.

- 3) The field office must establish the account in the SFMNS promptly to begin the billing process and to provide an orderly transfer of servicing. This includes reviewing the escrow requirement and making any necessary adjustments.
- 4) While the mortgagee is required to notify the mortgagor of the assignment, the field office should also send an initial letter to the mortgagor at this notice stage. A sample letter is in Exhibit 3-2.

3-3. BILLING PROCEDURES

- A. The SFMNS automatically bills the borrower monthly. On current accounts, the amount of those bills may change virtually monthly due to the way the system computes the service charge. (Reductions in principal balance reduce and change the service charge.) At loan set-up, the SFMNS issues an account number which must be placed on all payments to ensure application to the proper account.
- B. Mortgagors should be directed to mail all payments to the designated lock box facility.

Mortgagors will be instructed to send payments to the field office only for specific reasons such as:

- 1) The account has not been established in the SFMNS.
- 2) Only after a Notice of Intent to Foreclose has been sent and the mortgagor is attempting resolution.
- 3) Resolution of the default after the case has been formally recommended for foreclosure.
- 4) Section 235 recaptured assistance payments.

Any payments received by the field office must be deposited within one workday after receipt.

- C. If the field office has instructed the mortgagor to mail payments to the office, payments must be identified with an account number and sent to the lock box within 24 hours of receipt. If the account number is unavailable, use the FHA case number.
- D. Cash collections by the field office are discouraged; however, cash cannot be refused. Receipts must be given and the cash converted to a bank draft or money order, which must also be identified by account number and sent to the lock box within 24 hours. Each office should have a designated Cash Collections Officer in accordance with Handbook 1911.1.

-
- E. The SFMNS automatically applies excess payments to the principal if an account is current under the mortgage. The field office must notify the OFA Service Center if there is a need for a specific alternative application of payments.

3-4. FEES AND CHARGES.

- A. Like private mortgagees HUD has various fees and charges which are based on the mortgage document.
- B. Currently HUD assesses a service charge in lieu of MIP, interest on tax and other advances, late charges and fees for insufficient funds (NSF) checks. Except for NSF fees, these fees and charges are automatically assessed by the SFMNS. The NSF fees will be applied by OFA.
- C. If a field office wants to waive a previously assessed late charge or have service charge or interest on an advance adjusted, it must contact the OFA Service Center. A waiver should only be granted for exceptional situation where: a payment is not due (suspended payment foreclosure, etc.); there is a special payment arrangement (multiple payments, a due date other than the first of the month etc.); processing errors occurred at the lockbox; if advances were caused by improperly disbursed tax payments.

3-5. PAYMENT OF REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.

Revised procedures will be implemented in the near future. In the interim, refer to SFMNS 85-35, dated December 13, 1985, in Exhibit

3-3.

3-6. ANNUAL ANALYSIS OF ESCROW ACCOUNTS.

Every single family mortgage note account must be analyzed on an annual basis. The analysis will generally be accomplished through SFMNS. In some cases a manual analysis will still be required. Field offices are responsible for the quality of the data on which the analysis will be based.

A. When Will the Analysis Occur?

In general, the month in which the automated escrow analysis will be performed is based on the tax due date for the greatest percent of Secretary-hold mortgages in an offices inventory. This date is currently established in the SFMNS for existing accounts based on information provided by Loan Management Branch staff in each local office.

The escrow analysis date is the same for all accounts within an office's inventory and may not be changed without the approval of the Office of Finance and Accounting, Single Family Notes Branch. As new accounts are added to the inventory, Loan Management Branch staff are responsible for establishing this date in the SFMNS. The analysis will be automatically performed on the date entered. A preliminary escrow analysis will be performed approximately 30 days prior to the actual analysis in order to provide field offices with an opportunity to adjust account data.

B. How Will the System Perform the Analysis?

- 1) SFMNS will review tax line items in the System to determine the monthly escrow requirement. The analysis will determine the requirement which will represent one-twelfth of the sum of the total tax requirements during the 12-month period immediately preceding the date of the analysis.
- 2) The preliminary and final analysis will generate two reports --No. 668, Escrow Analysis Preliminary Run, which will allow auditing and correction of the data; and, No. 669, Escrow Analysis Exceptions, which defines the exceptions and tells you what action, if any, you must take. The preliminary analysis will not affect the data on your accounts. Only the final analysis will adjust the accounts where necessary. Copies of these reports will be sent to your office by Headquarters at the appropriate times.
- 3) At new account setup, a "cushion" will be established for each account within the portfolio. The cushion will be equal to one-sixth of the total annual tax requirement. SFMNS will include one-twelfth of this amount as part of the new monthly escrow requirement. The amount of the "cushion" should be adjusted annually to correspond to changing tax requirements.
- 4) The analysis will not take escrow balances or shortages into consideration. Instructions regarding escrow surpluses are contained in the SFMNS Users Guide. A manual escrow analysis must still be performed in conjunction with 235 loan recertifications and loan assumptions.

C. What will Happen as a Result of the Analysis?

After completing the activities set forth above, SFMNS will do the following:

Bills generated after the analysis will reflect any change in monthly payment amount based upon an increase or decrease in the escrow requirement. A message on the bill will indicate a payment increase or decrease. The amount of any change will appear as part of the message.

2) Forbearance Agreements

SFMNS will continue to bill these accounts under the terms of the agreements.

D. Setting Up Tax Records On New Accounts.

The following activities should be performed to establish tax records on a new account. Detailed data entry instructions in the SFMNS Users Guide should be carefully followed as tax data input at new account setup are used to disburse and post taxes as well as to perform escrow analysis.

- 1) Establish an escrow payee record if the name and address of the Taxing Authority (TA) has not previously been entered into the SFMNS and a payee number issued.
- 2) Establish a line item in SFMNS for each type of tax levied against the property by the taxing authority(ies) having jurisdiction over it. If this information has not been provided on the Single Family Application for Insurance Benefits form (HUD-27011), you are responsible for obtaining it.

To properly establish the line item, enter all of the following data: the SFMNS status code; the appropriate SFMNS tax type code; the actual penalty date for the type of tax being paid; the tax term; the property identification number established and issued by the TA; the amount of tax; and the SFMNS payee identification number. For each account, also establish one "cushion" trailer by entering the type of data described above using a tax amount equal to one-sixth (2 months) of the total annual taxes paid on the property.

- 3) Enter the escrow analysis date established for your office.

3-7. DAMAGED PROPERTIES AND HAZARD INSURANCE.

- A. Policy. Assigning mortgagees should be clearly told not to terminate hazard or homeowner's insurance but to assign the beneficiary interest to the Secretary of HUD. The mortgagor remains

securing sufficient insurance. Lack of hazard insurance alone is not, however, sufficient reason to accelerate the mortgage.

- B. Servicer's Responsibility. The servicer should immediately encourage the mortgagor to secure sufficient insurance with the Secretary as beneficiary and to obtain a copy of the insurance certificate for HUD's records.

The servicer should use SFMNS's Loan Monitoring Screen as an alert system for annually reminding mortgagors to secure hazard insurance.

- C. Disposition of Insurance Proceeds. Where a property has incurred a loss due to fire, flood, windstorm, or similarly insurable hazards the following step-by-step procedure must be followed by the field office.

- 1) Determine the extent of the coverage.
 - a. If a total loss has occurred an appraisal of the cost and feasibility of restoration must be made.
 - b. If a partial loss has occurred, then any coinsurance factors must be considered. Separate owner resources may be needed.
 - c. If the mortgagor has failed to take action to make a claim for loss on an insurance policy in force within the prescribed time limits, the field office must make such claim as mortgagee before its right to make such claim ends.
- 2) Determine the intent of the mortgagor to restore in light of the proceeds/resources.
 - a. If the intent and realistic ability exist, then restoration should proceed and mortgage payments may be deferred until the property is habitable. Interest will continue to accrue on the principal.

Many hazard insurance policies provide a temporary shelter allowance. In such cases reduced or deferred payments may not be necessary unless the allowance is not sufficient.

Where hazard insurance proceeds are limited, or do not exist, the mortgagor may be willing and able to secure a loan for the restoration. In such cases the field office should develop, with the mortgagor, a realistic timetable for contracts for restoration to be signed and work commenced. If such a timetable cannot be established then a field office may proceed to b. (below).

- b. If either intent or realistic ability do not exist, ask OFA to apply any insurance proceeds to any outstanding delinquency and then principal and the case placed into an inactive status, unless the proceeds satisfy the mortgage.

D. Loss Draft Checks.

- 1) If damage is less than \$1,000 the field office may endorse and release the insurance proceeds to the homeowners upon presentation of the insurance adjuster's report and a contract for restoration.
- 2) If damage is between \$1,000 and \$5,000, the insurance adjuster's report and contract for restoration must be submitted with the loss draft. In addition:
 - a. The field office must advise the mortgagor and/or contractor in writing that the funds will be released upon completion of the work.
 - b. The field office must retain the loss draft as instructed in HUD Handbook 1911.01, Handling and Protecting Cash and Other Negotiable Instruments.
 - c. When the work is complete, a HUD representative must inspect the property and verify completion.
 - d. Release of the HUD-endorsed loss draft must not be made to either the mortgagor or contractor without written authorization of the other party.
 - e. Contractors to whom direct release is anticipated, must be required by the field office to submit a Waiver of Lien Certificate and Satisfaction/Completion Certificate from the mortgagor.
- 3) If damage exceeds \$5,000 the contract for restoration should provide for progress payments. These payments must be made upon verified and certified completion of each phase of the restoration. The loss draft check must be deposited locally, with OFA advised to establish an account from which partial payments may be drawn. As each phase is completed the field office will request OFA to prepare a check in the amount of the progress payment.

- 4) Progress payment checks issued by HUD should require endorsement of both mortgagor and contractor.
- 5) If, after the property is successfully restored to protect HUD's security position, residual funds exist the field office should determine whether all or part of the surplus was for lost personal property.
 - a. To the degree that the residual amount was to replace personal property it should be released to the mortgagor.
 - b. To the degree that the residual amount was for structural loss it should be applied to reduce any delinquency. If a delinquency does not exist then the amount shall be returned to the mortgagor.

E. Damaged Properties - Inactive Status.

- 1) Policy. Inactive status removes the responsibility of pursuing debt collection activities that are likely to cost more than they yield. Also, it protects HUD's interest by not incurring more expense (other than possible appraisal costs) or liabilities such as advancing taxes, preservation activities, paying demolition costs, or the costs of property management.

The lien on a mortgage in inactive status continues until the property is sold at a tax sale. If the mortgagor sells the property prior to a tax sale, the mortgage lien will remain on the property. Any payments made must be accepted and applied against any remaining delinquency.

Mortgages should not be placed on an inactive status without the approval of Headquarters if the as-is value of the property is more than \$4,000.

- 2) How to remove SHMs from active debt collection status.
 - a. Determine that a property has been severely damaged by fire, natural disaster, vandalism, mortgagor neglect or when municipal authorities have demolished, or threaten to demolish, the house. This determination should be based upon:
 1. Inspection of the property to assess the cost of necessary restoration.

-
2. The extent to which insurance will restore the property.

3. The ability and intent of the mortgagor to restore the property.

If the property has been abandoned or the mortgagors' whereabouts are unknown lack of intent is implied.

If the mortgagor can be contacted, establish whether the mortgagors can and will restore the property (see below); and,

4. The inspection suggesting that the value of the property, even in a damaged condition, may be close to HUD's total investment. If this is the case, have a staff or fee appraiser determine the residual fair market value of the property. The aim is to protect HUD's interest. In certain situations that may mean that it makes better financial sense to foreclose, acquire the property, and repair or restore it.

The appraisal fee may be paid by vouchering the Insurance Accounting Division, Control and Reconciliation Section, Office of Finance and Accounting, as services associated with foreclosure, on Standard Form 1034.

- b. If the mortgagor can't or won't restore the property, the field office should review the case pursuant to 3-7 E.2) a.4. in order to determine whether the case should be placed in inactive status.

If the case is in foreclosure, contact the Office of General Counsel (OGC) immediately.

- c. If the mortgagor can and will restore the property, field offices should not place the case into inactive status but may accept partial payments until the property is again habitable. If the mortgage was assigned under the Assignment Program and 36 months has not elapsed since assignment, the payment plan could be changed instead. See Chapter 4.

- d. Simultaneously with placing the case in inactive status:

1. Send the local taxing authorities written notice that tax bills and assessments go directly to the mortgagor since HUD will no longer advance funds; and,

2. Send the mortgagor written notice (see sample, Exhibit 3-4), by certified mail, of:
 - a. The continuing responsibility to make the mortgage payments (less taxes) to HUD at the lock box even though there will no longer be a monthly bill from the SFMNS;
 - b. The amount of the monthly mortgage requirement;
 - c. The responsibility to pay taxes directly to the taxing authorities;
 - d. The right to appeal the assessment to the taxing authority based on residual value;
 - e. The potential liability for other costs (demolition, personal injury, etc.).
- e. Review the SFMNS Amount Screen to check the balance in the escrow account. If there have been accruals inform the mortgagor they will be used to offset outstanding advances, delinquencies or principal. Simultaneously, instruct OFA to apply the funds to the account.
- f. If there are insurance proceeds but they are insufficient to allow the mortgagor a reasonable prospect of restoring the property or the mortgagor indicates an unwillingness to do so:
 - 1) Identify the proceeds by account number;
 - 2) Secure the mortgagor's endorsement (if necessary); and,
 - 3) Send the proceeds to the lock box.

The SFMNS will automatically apply those proceeds first to any delinquency, and then to the principal balance.

- g. If it becomes necessary to place the case back on an active status the field office must:
 - 1) Secure the most recent tax data from the taxing authority;
 - 2) Establish the amount necessary for escrow needs; and,
 - 3) Reverse those actions cited in Steps d, e and f above.

This should occur, infrequently, when the mortgagor has reconsidered the decision not to restore the property.

Such a reversal should be accompanied by a lump sum payment at least equivalent to the escrow receivables so that HUD will be in a position to pay the next outstanding tax invoice without having to advance that which should have been accrued.

- h. When an inactive case has gone to tax sale notify OFA, Single Family Notes Branch in writing so that the account can be purged from our portfolio.

When a field office believes it wouldn't be appropriate to place a case in inactive status it should suggest the alternatives (mortgage satisfaction, foreclosure, etc.) and document its recommendation for the approval of the Office of Insured Single Family Housing.

Instructions for encoding the SFMNS for inactive status are in the User's Guide and supplementary instructions.

3-8. SALES AND ASSUMPTIONS.

- A. Payoff and Bring-Current Statements. The field office must furnish these on all SHMs--except tor graduated payment mortgages and bulk sale PMM's--upon request of the mortgagor or its authorized agent. Initially, on all "07" accounts, the field office should check LNS2 to determine whether a post-audit has been completed before issuing a pay-off or bring current statement. In doing so, the field office

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is responsible for seeing that the amount for any taxes paid, but not posted, are included and that any taxes scheduled to be paid after the statement is issued are not paid until the status of the payoff or assumption is determined. If it is necessary to pay the taxes, an amended statement must be issued.

The Office of Finance and Accounting (OFA) will furnish statements on graduated payment mortgages and bulk sale PMM's on request from the field office. (See SFMNS User's Guide and related memoranda for calculation procedures and suggested letters.)

B. Payment in Full.

- 1) The field office must:

- Request the mortgagor to remit the payment to the field office.

- On receipt, determine that the remittance will pay the account in full. Resolve discrepancies immediately with the closing agent.
 - If the remittance is correct, clearly mark it with the SFMNS account number and send to the lock box for deposit within 24 hours of receipt. (See SFMNS User's Guide and related memoranda for system adjustments.) The Service Center must be simultaneously notified of the payment in full.
- 2) OFA must: Apply funds to the account and notify the Field that financial transactions have been completed. The field office is responsible for satisfying the mortgage, assuring recordation of the Satisfaction Instrument in those jurisdictions that prescribe this as the mortgagee's responsibility, and sending a completed satisfaction to the owner.

C. Partial Payment on a Bulk Sale PMM for Partial Release of Security.

- 1) If a mortgagor wants to pay off an individual property in the bulk sale PMM package, the field office must furnish a statement of the payoff amount for the property at 110% of the amount of the mortgage attributed to that property, plus any delinquency due on the account.

- 2) When the payment in full is received and verified as accurate the field office must note on it the account number, FHA case number and bulk sale number before sending it to the lock box for deposit.
- 3) OFA, Single Family Mortgage Notes Branch will establish the new monthly payment after a property has been spun off.
- 4) Instruct the mortgagor to:
- a. send a bill stub with all remittances.
 - b. annotate remittances with the account number, FHA case number and bulk sale numbers.
- 5) The field office must give the mortgagor an executed Partial Release of Security for these individual property releases.

D. Sale with Assumption.

- 1) Assumption with account brought current.
- a. Upon notice of an assumption, the field office must give the

mortgagor a statement of account as mentioned in paragraph 3-8A above, and should request the following:

1. Remittance of the full amount to bring the account current.
 2. Copy of the recorded instrument conveying title.
 3. Sufficient information for identification of the buyer.
 4. Statement from the seller releasing escrow balances to the buyer.
- b. Upon receipt of the remittance and items to effect a transfer, the field office should check the account record to be sure the remittance amount is accurate and resolve any discrepancies immediately. If acceptable, the remittance must be clearly marked with the account number and sent to the lock box for deposit. (See SFMNS User's Guide and related memoranda for system adjustment.)

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2) Request for release from liability.

- a. If the release is warranted, field offices may approve requests for release from liability and substitution of mortgagors or assignment of vendee's interest in a contract for deed. Essentially, this is the HUD-2210.1 procedure.
 - The buyer must be acceptable to the field office in the same manner as if he/she had been the original purchaser.
 - The request must be supported by an Form FHA HUD-92900, executed by the prospective buyer, and a current credit report from the contract source showing acceptable credit data.
 - Evidence that the successor mortgagor assumes and agrees to pay all sums due under the credit instrument must also be included. When the transaction is complete, this evidence must be supplemented by a certified or photostat copy of the deed of conveyance, if it includes the required information or of any other document of record.
- b. When the field office determines that the seller should be assured that he/she will not be held liable for a later deficiency, it may prepare a letter consistent with the form the Exhibit 3-5, that is acceptable to the seller.

Field offices are not authorized to alter either the form or the substance of the letter, and a request for release in any other form must go to the Office of the Assistant General Counsel (Home Mortgage Division).

- c. If an account is delinquent, the field office must not approve a release unless the mortgage will be brought current as a part of the transaction, or Headquarters approves.

3) Assumption when account is not brought current.

- a. HUD's interest is best served if the assumptor brings the account current. Assumption can also be in HUD's interest where the account is not brought current.

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- b. In cases involving owner-occupants, where an account is not being brought current as as part of an assumption, the following requirements are to be incorporated in the field office decision regarding the acceptability of the substitute mortgagor in addition to the items indicated in 3-8D 1) a. 2, 3, and 4 above.

- 1. The field office must secure a significant portion of the delinquency in a lump sum payment; generally this means at least 50% of the delinquency.
- 2. The assumptor must be willing to enter into a forbearance agreement acceptable to the field office. The payment plan should always require an increased payment so that the entire remaining delinquency is paid in no more than 12 months. Any plan requiring a longer term requires prior approval by Headquarters.
- 3. The assumptor must demonstrate an ability to meet the financial obligations.

4) Assumption without the prior knowledge of the field office. Should an assumption occur without the prior knowledge of the field office, the field office must initially determine if the account is in a current or delinquent status under the mortgage.

- a. If the account is current, the field office need only request that the items indicated in 3-8D 1) a. 2, 3, and 4. above be furnished for account transfer and consult the SFMNS User's Guide and related memoranda for system adjustments.

- b. If the account is delinquent, an immediate determination must be made as to the intent of the parties to the sale to whether the account will or will not be brought current as a part of the sales transaction. If the matter of bringing the account current cannot be resolved by the parties to the sale, the field office must use its best judgment to determine whether to proceed with foreclosure. The field office, after making this determination should consult 3-8D 1) or 3) above as appropriate for guidance.
- c. If the assumptor refuses to bring the account current or to sign forbearance agreement, the field office shall establish a payment plan which provides for the regular mortgage payment and an amount to eliminate the remaining delinquency in a period not to exceed 12 months. The assumptor shall be notified of the plan and the field office shall service it as it would any other delinquent mortgage.

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E. Satisfactions of Mortgage at Less Than HUD's Investment.

NOTE: WRITE-OFFS ARE ONLY PERMISSIBLE AT MORTGAGE PAYOFF.
WRITE-OFFS MAY NOT BE MADE ON ACTIVE MORTGAGES OR AT
TIME OF ASSUMPTION.

- 1) The following issues must be considered in deciding whether to write off a shortage.
 - a. Was the shortage caused as a result of HUD's (or its agent's) error? If the mortgagor or his agent was at error, HUD should not write off.
 - b. Has the field office attempted to collect the shortage from the mortgagor?
 - c. Has the mortgagor benefited from a HUD error?
 - d. Has the mortgagor disposed of the property in reliance on the payoff statement from HUD? If title has passed to a new owner and the original mortgagor refuses to pay, the shortage should be considered uncollectible. If the mortgagor has not disposed of the property and the debt is valid, consideration must be given not to satisfy the mortgage until the debt is paid.
 - e. Is the write-off in HUD's best financial interest?

- 2) Amounts under \$500.00

- a. Amounts up to \$500.00 may be written off in the field without prior approval from Headquarters.
- b. The decision to compromise or settle a claim must be based on the facts of the case and must be in the best interest of the Secretary.
- c. Each decision to write off must be supported by a narrative "memo to the file" justifying and explaining how the decision was reached.
- d. A copy of the decision memorandum and all pertinent documentation must be included in the servicing file.
- e. The official with the authority must authorize OFA to write off the amount. This is done by sending a memorandum to the Director, Post Insurance Division (AFMP) in OFA. The original note should be marked "paid in full" or as otherwise appropriate by local law.

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- f. Copies of the memorandum to OFA and the decision memorandum must be sent to the Director, Single Family servicing Division (HSSL) in Headquarters.

3) Amounts over \$500.00

- a. Amounts over \$500.00 require prior approval by Headquarters before they can be written off by the field.
- b. Send the recommendation to the Director, Single Family Servicing Division (HSSL) in Headquarters requesting concurrence in the decision. Include the justification, supporting data and background information.

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Exhibit 3-1.1

Single Family Application
for Insurance Benefits

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Exhibit 3-1.2

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Exhibit 3-2

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Exhibit 3-3.1

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Exhibit 3-3.4

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Exhibit 3-3.5

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Exhibit 3-3.6

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Exhibit 3-5

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CHAPTER 4 - SERVICING THE DELINQUENT MORTGAGE
(Forbearance Agreements and Payment Plans)

- 4-1. POLICY. To the extent possible, forbearance is the primary tool utilized to avoid acquisition. The objective is to help the mortgagor achieve debt-free homeownership.

Field offices must make every effort to bring mortgages current by developing forbearance agreements and to take other actions which also minimize losses to HUD.

4-2. FORBEARANCE AGREEMENTS.

- A. Requirement. All delinquent mortgages not in foreclosure, bankruptcy or inactive status must be placed under a forbearance agreement - which temporarily supercedes, but does not replace, the mortgage instrument. Field offices are responsible for developing and entering into agreements with mortgagors.
- B. Format.
- 1) Field offices must use the forbearance agreements in Exhibits 4-1, 4-2, and 4-3. These agreements encompass the standard provisions described below.
 - 2) Changes to the provisions may only be made with specific Headquarters approval. Only additions, such as an agreement to pay more than required under the 35 percent rule, may be inserted without Headquarters approval.
- C. Documentation. All agreements lasting more than 60 days must be in writing so that:
- 1) A record of the terms and conditions is established;
 - 2) Mortgagors will know their specific rights and responsibilities;
 - 3) Field offices have documentation to support their servicing efforts for review or if foreclosure becomes necessary; and,
 - 4) The agreement must be entered into the SFMNS.

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- D. Required provisions. All agreements must have certain standard provisions tailored to the individual mortgagor's case. These are:

- 1) Duration. Agreements must be for no more than 12 months. They should be shorter if:
 - payments are suspended,
 - less time is needed to cure the delinquency,
 - you know the mortgagor's financial circumstances will change in less than a year.
- 2) Payment amount. Agreements must specify the required payment. (For details, see paragraph 4-3, Payment Plans.)
- 3) Payment due date. Agreements must state that payments are due the first of the month and specify the beginning and end dates of the agreement. Note: The due date of the first payment should be the first of the month after HUD issues the agreement.
- 4) Hazard insurance. Agreements must specify the minimum amount the mortgagor must carry. (See Chapter 3 for these requirements.)
- 5) Property tax escrow. All agreements must tell the mortgagor that portions of the monthly payment will be set aside to pay taxes and what action will be taken if the amount of tax changes.

NOTE: The mortgagor should be informed that if sufficient funds are not available in the escrow account at the time taxes are due HUD will advance funds to pay the taxes and charge interest, at the note rate, on those advances.

- 6) Termination. All agreements must include the conditions and results of termination.
- 7) Status of original Note and Mortgage. All agreements must clearly state that the original note and mortgage remain in full force except where the agreement temporarily modifies them.

E. SFMNS. Field offices must put the forbearance agreement terms into The SFMNS in time for automatic billing of the first payment. (See the SFMNS User's Guide for instructions.)

F. Monitoring. Field offices must monitor mortgagor performance under the agreements and, as necessary, review and restructure agreements, collect payments, or recommend foreclosure. (These activities are covered in this Chapter and Chapter 5.) The SFMNS' MONT Screen should be used to remind staff in advance of

necessary review schedules.

- G. Notification to Mortgagor. At the beginning of the initial 36-month period after the date of the assignment acceptance letter, the field office must advise the mortgagor of the following:

"During the next 36 months HUD will calculate your payment plan for the maximum payment based on your ability to pay. As a result, you may be asked to make regular or increased payments or your payments may be reduced or even suspended. Regardless of which type of payments you have over the next 36-months, you must begin to pay at least the full regular monthly payment due under your mortgage (or deed of trust) on the first day of the 37th month after notification of assignment acceptance. If you are financially able at any time your mortgage is with HUD, you will also be required to make payments to eliminate any outstanding delinquency."

4-3. PAYMENT PLANS.

- A. Policy. To obtain the maximum feasible payment to reduce the delinquency as soon as possible and help the mortgagor achieve debt-free homeownership. Simultaneously, the payment plan must be commensurate with the mortgagor's ability to pay.

-- Escrow shortages must be considered in developing the plan and, if possible, the mortgagor must be required to reduce them.

Where a "technical" delinquency has been created, solely due to escrow advances, the mortgagor's bill will show him or her delinquent until the advances are expunged.

If the mortgagor cannot eliminate the delinquency advance through a lump-sum payment, or the time necessary to expunge it in a reasonable fashion extends beyond the next escrow analysis, then a simpler self-explanatory payment plan shall be used (see Exhibit 4-3).

B. Types of Payment Plans.

- 1) Increased. Requires the regular payment due under the mortgage plus an amount toward the delinquency. It may be used in an assumption that does not bring the account current. It may be used for any delinquent account where the mortgagor's monthly income, less expenses (calculated using Form HUD-92208), yields an amount available for mortgage application which exceeds that required to make the regular mortgage payment. A mortgagor may

voluntarily agree, as part of the written plan, to make increased payments.

- 2) Regular. Use when it is determined that the mortgagor is financially unable to reduce the delinquency but has enough income to meet obligations. Requires the regular payment due under the mortgage--or for assisted mortgages, the mortgagor's "share". It also represents the "minimum" amount required after the initial 36 months following assignment acceptance has expired.
- 3) Reduced.
 - a. Use when the mortgagor is undergoing temporary hardship beyond the mortgagor's control and is unable to pay the regular or increased monthly payment.
 - b. Maximum period. 36 consecutive months. The SFMNS loan monitoring screen must be used to monitor this period, which is measured from:
 - date of the assignment acceptance letter for a mortgage assigned in a delinquent status.
 - For PMMs, or automatically assigned mortgages, 36 months from initial default.
 - c. Maximum Payment. During the 36 month period, where it is determined that the mortgagor cannot meet the regular or increased payment, the monthly payment demanded of the mortgagor must not cause the mortgagor's total housing expense to exceed 35 percent of net effective income. However, if a mortgagor can, and is willing to, pay more than the 35 percent the field office may incorporate a larger amount in the forbearance agreement. (See 4-2, B,2)) Such an amendment must be fully documented.

Apply the 35 percent rule as follows:

1. Use it only if the monthly income available toward the mortgage (on Form HUD-92208) is less than the full mortgage payment.
2. Monthly net effective income is the gross monthly income less monthly city, State and Federal income and social security taxes.
3. Total monthly housing expense is the monthly mortgage payment plus the mortgagor's other monthly housing

expense: housing maintenance, utility and hazard insurance expense,

4. Maximum monthly reduced payment under 35 percent rule is:

35% of net effective income, minus:

- Monthly utility cost
- Monthly hazard insurance premium, if any,
- Monthly home maintenance cost

- 4) Suspended. (No monthly payment) Use under unusual circumstances only when analysis on Form HUD-92208 and application of 35-percent rule dictate it:

- a. only during first 36 months after assignment acceptance and,
- b. for no more than a 6-month term during which time financial circumstances must be reviewed so that payments can be adjusted promptly.

C. Minimum Payments.

- 1) The 37th month after the assignment acceptance letter, the mortgagor must begin paying at least the full monthly payment due under the mortgage (principal, interest, current escrow requirements and service charge).
- 2) If the mortgage is not current, the mortgagor must sign a forbearance agreement.

- a. Terms. The agreement must require at least full monthly payments due under the mortgage and have a term of no more than 12 months.
 - b. Review. The mortgagor's financial circumstances must be reevaluated near the end of the term of each agreement before a new one is executed. If the evaluation shows that the mortgagor can cure the delinquency and make the full monthly payment, a higher payment must be required.
- 3) If the mortgagor is financially capable, the delinquency must be cured on or before the maturity date of the mortgage. Otherwise, the mortgage may be modified (2-5c.) or extended so that the delinquency may be paid over a period not to exceed 120 months (10 years) beyond maturity date. "Mortgage extension" is an informal process of failing to satisfy the mortgage at term. In "extending" the mortgage, the field

office must insure that the priority of the mortgage lien is not affected. Consult Regional/Chief Counsel, if necessary.

D. Lump Sum.

- 1) Such payments to reduce delinquency may be accepted any time; but they generally occur with the first forbearance agreement. (A format for an agreement with a lump sum payment is in Exhibit 4-2.)
- 2) The field office should request a lump sum payment from the mortgagor who:
 - a. has the cash available, and
 - b. would still be able to make subsequent monthly payments.

4-4. FORBEARANCE RELIEF FOR SECTION 235 SUBSIDIZED MORTGAGES.

- A. For mortgagors still eligible to receive assistance, family income must be recertified and verified at least annually. The same policies and procedures for private mortgagees, in Chapter 10 of Handbook 4330.1, apply.
- B. Try to coordinate the anniversary date of the assistance payments contract with the proposed payment plan.

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C. Remember the following:

- 1) Family income used to determine section 235 eligibility is different from what determines the mortgagor's ability to pay.
 - a. Section 235 eligibility income. The income of all persons related by blood marriage or operation of law living in the household, exclusive of earnings of minors.
 - b. Income for payment plans is limited to the responsible mortgagor(s). Income that can't be relied on, can't be included; neither can incomes of persons not obligated under the mortgage.
- 2) Section 235 assistance computation takes precedence. The "mortgagor's share" shall be viewed as the "full mortgage payment" for purposes of developing the payment plan.
- 3) For mortgages insured after January 1976, recertifications of family income and composition are required annually and when the servicer becomes aware that the monthly family income has

risen at least \$50. For cases insured before that date the assistance payment will not change between annual recertifications unless income goes down and the mortgagor brings it to the field office's attention.

4-5. COLLECTION PROCEDURES.

- A. General. Deal with a delinquency the first month a payment is missed. A partial payment or a break in payment pattern are the signs of problems. Keep close records and monitor the payment plan. Special telephone efforts, letters and field visits are essential during the early stages of default.

Objectively determine the cause of default and arrive at a payment plan that will eliminate the default. When warranted, initiate foreclosure.

- B. Early Contact and Follow-up.

- 1) Mortgagors under a forbearance agreement require individual attention and close monitoring. Early delinquency notices followed by telephone calls will prompt most mortgagors to pay or explain the delay. There is no substitute for consistent early contact and follow-up. Do not rely on SFMNS generated delinquency notices as your sole collection tool.

- 2) The SFMNS Delinquent Status Report (Report No. 507) provides delinquency status on accounts in 30, 60, 90, and 90+ day categories. These reports must be used to determine which mortgagors have delinquent payments and need servicing activity. (See the SFMNS User's Guide concerning these reports.)

- C. Common Causes of Default Under Forbearance Plans. Identifying the reason for non-payment will help you develop a reasonable repayment plan. Even the most carefully planned forbearance plan can be rendered unworkable by unexpected events. In such cases prompt restructuring of the plan is called for. Common causes for default include:

- 1) Unexpected major repairs or restoration due to damage or deterioration of a major structural component.
- 2) Temporary loss of income due to such things as unemployment, illness, death in family and divorce which occurred after the forbearance plan was established.

- D. Required Servicing During Month 1 of a Delinquency (day 1 through 31). SFMNS automatically produces a delinquency letter the 17th day of the month if a payment is not posted to the account by the 16th.

A late charge is also assessed. But, this should not limit you from initiating action of your own.

- E. Required Servicing During Month 2 of a Delinquency (day 32 through 61). Beginning the 32nd day of a delinquency, when two payments are past due, the Field Office must step-up servicing activities. These activities must be directed toward collection of the delinquent payments or assessment of the cause(s) of the delinquency. The effectiveness of the SFMNS's automatically generated delinquency notice loses its effect with each successive month and personal attention is necessary.

Directly contact the mortgagor, determine the cause of default, and, if appropriate, restructure the payment plan and refer the mortgagor to counseling or initiate foreclosure when warranted. Foreclosure is warranted when the property has been abandoned or the mortgagor has expressed a clear refusal to cooperate further. All actions should be thoroughly documented.

- F. Required Servicing During Month 3 of a Delinquency (day 62 through 90).
- 1) On the 62nd day of delinquency 3 payments are past due. The field office must review the payment plan and servicing actions taken and decide either to restructure a payment plan or

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foreclose. Providing all required servicing attempts have been completed with no positive result, and a complete analysis has been made, a decision to foreclose must be made before the 4th payment is missed (92nd day) (see paragraph 4-6 concerning review of payment plans). All actions must be thoroughly documented.

- 2) You cannot foreclose until the month 2 servicing is completed, unless the property has been abandoned.
- 3) To recommend foreclosure, follow Chapter 5.

NOTE: Partial payments may advance the paid-to date on the Forbearance Screen (FORB), but three payments can be measured from the initial forbearance delinquency. However, partial payments may also be indicative of a concern, rather than total disregard, for the obligation. In this latter case restructuring of the agreement may be warranted.

- G. Collection Techniques. The following summarizes basic techniques, which should be tailored to the individual case.

- 1) Telephone Contact. This is one of the most effective and practical collection tools before sending a collection letter. The telephone calls are not only more personal, but faster and cheaper than automatically generated delinquency letters. They demand immediate attention and cannot be thrown away or deferred. The staff person can vary his/her collection appeal and adapt his/her tone and approach to the mortgagor's response and attitude. Since mortgagors normally work the same hours that you do, and sometimes cannot be reached at their work location, consideration may be given to varying the work schedule to allow for evening calls. Calls should be limited to "reasonable hours", usually not later than 9:30 p.m.
 - a. Always keep in mind that the purpose of the call is to determine: why the payment has not been made; and when it will be made.
 - b. Plan and organize the call; review the mortgagor's record.
 - c. Have the pertinent information on hand during the conversation. Use a telephone near a SFMNS terminal so you can access the account.
 - d. Talk only with the mortgagor. You must never discuss the account with anyone else unless the mortgagor authorizes it in writing.

- e. Identify yourself, then confine the conversation to the purpose of the call.
- f. Always maintain control over the telephone conversation. Do not argue with the mortgagor.
- g. End conversation when a firm commitment has been made.
- h. Document the servicing file and set a follow-up date. The loan monitoring screen of the SFMNS can be used to monitor follow-ups.
- i. Follow-up is essential. As soon as you are aware of a missed payment date, contact the mortgagor.

NOTE: Each servicer should have, and use, the Guide for Telephone Collections, a HUD publication, GPO 904 082. It tells how to gather facts and pursue evasive responses.

- 2) Face-to-face contact. Personal contacts are also effective.

- a. If face-to-face meeting are feasible, they must be scheduled at the mutual convenience of the mortgagor and the field staff. Unless either pre-arranged, or the mortgagor is encountered, and spoken with, during the course of a property inspection, such inspections are not considered as attempts at face-to-face meetings.
- b. Field office staff are not required to attend meetings outside the field office; but if they do, they cannot accept a cash payment on the account at the meeting. Meetings may be held at the mortgagor's home, counseling agency, mortgagee's office or even another field office which may be closer to a mortgagor's residence. Out of office meetings may be necessitated by travel, illness or job constraints, etc.
- c. Be fully prepared for an objective and complete discussion of the case. Concentrate on fact-finding, the mortgagor's obligations under the mortgage and the forbearance agreement, problems affecting ability to meet these obligations, and the results of not meeting them.

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- d. In planning and carrying out a meeting see that:
 - 1. Mortgagor agrees to specific time and place.
 - 2. Tell the mortgagor in advance what specific information you need.
 - 3. Assure privacy, confidentiality; and freedom from interruption.
 - 4. Maintain a friendly but businesslike manner and an atmosphere of understanding and cooperation. Refrain from arguments.
 - 5. Emphasize the seriousness of the delinquency and the possibility of eventual foreclosure.
 - 6. If the forbearance agreement cannot be reinstated determine the cause of default and obtain the facts to assist in recommending continuation of the present payment plan, a new plan, or foreclosure.
 - 7. Your decisions based on the meeting must:
 - be in writing and approved by your supervisor.
 - state the payment terms.

-- be sent to the mortgagor.

- 3) Letters. Collection letters are most effective when they are not the same repeated form letter, but more personal. Letters are also valuable to confirm agreements made during telephone or personal contacts.

-- Never bring up foreclosure unless you fully intend to recommend it.

- 4) Fact Finding. Whether by telephone, letter or in person, questions and demands should be phrased to elicit a positive answer. Always ask open-ended questions such as:

Ones that begin with the words:

- a. Who, What, Which, When, How, and Why . . . ?

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- b. What caused you to miss the payment?

- c. When will you make a payment?

- 5) Documentation. All contacts with the mortgagor must be well documented on a case history sheet for the servicing file. Use the Assignment Request Case History Sheet, Form HUD-92210, (EXHIBIT 4-4), or a similar sheet. The servicing Card, Form HUD-92202, is useful for making quick notes, but lacks the space for detailed information. Cryptic or shorthand notes at the bottom of copies of correspondence may not suffice as thorough documentation.

- 6) Data Collection and Evaluation. Three HUD forms help in determining the mortgagor's ability pay:

- a. Request for Financial Information, Form HUD-92068F.
- b. Request for Verification of Employment, Form HUD-92004-g.
- c. Analysis of Mortgagor's Income and Expense, Form HUD-92208.

In addition, for Section 235 cases, the data derived from the Recertification of Income and Family Composition procedure will help in that determination.

- 7) In addition to the collection procedures outlined above, HUD may also use several additional techniques provided under OMB Circular A-129 (Managing Federal Credit Programs). These

activities will be initiated by Headquarters:

- a. Salary offset for Federal employees.
- b. Income tax refund offset.

4-6. REVIEW AND RESTRUCTURE OF PAYMENT PLANS.

A. Specific Review Periods. Once a payment plan has been developed, the mortgage account must be monitored as follows.

1) When an Account is in Default.

- a. No foreclosure recommendation shall be made, except when the property is vacant, until the payment plan has been reviewed and all servicing/collection efforts required in paragraph 4-5 have been completed.

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- b. As part of this effort ask the mortgagor to complete and return Form HUD-92068F within 14 days. Failure to return the Form HUD-92068F is not, of itself, sufficient ground to recommend foreclosure. Include a letter advising the mortgagor that:

- failure to return the form may result in a continuation of the current payment or the payment required under the mortgage, whichever is greater.
- foreclosure could result from the delinquency.

- c. You must recommend foreclosure when:

- reanalysis shows the existing plan was realistic but the mortgagor refused to make payments,
- or 37 months have expired and the attempted minimum payment plan fails.

- d. If the plan was not realistic, or if changed circumstances warrant, it must be restructured.

2) Before the Plan Expires.

- a. Each month the field office receives Loan Monitoring Report No. 246, listing the forbearance agreements expiring in 60 days.
- b. Where an agreement is due to expire, have those mortgagors submit financial information (Form HUD-92068F) within 14

days. Advise them that failure to return the form will result in a continuation of the current payment or minimum payment, whichever is greater.

1. If the form is received, use it to re-evaluate and, if necessary, revise the payment plan.
2. If it is not:
 - check with the mortgagor to see if failure to return the form was an oversight; if it was, mail another form.
 - otherwise, update the SFMNS for the higher amount to become effective immediately and send the proposed agreement for mortgagor's signature.

- c. If the mortgagor doesn't return the agreement signed, proceed to service the account under the terms of that proposed agreement.

B. Analyzing Income and Expenses.

- 1) You must use the mortgagor's Forms HUD-92068F and HUD-92208. (Samples are in Exhibits 4-5 and 4-6.) If a mortgagor does not submit a current Form HUD-92068F, place the account under the full note payment or the previous payment plan amount, whichever is greater.
- 2) In making the analysis, remember that HUD accepts assignment of a delinquent mortgage solely to help a mortgagor to avoid foreclosure. What may be perceived as extravagant may have been affordable before the mortgagor encountered financial difficulties. However, the assignment program should not subsidize a mortgagor's continued extravagant lifestyle by accepting increased expenditures for new non-essential items while making reduced or suspended mortgage payments. Financial counseling for the mortgagor is essential.
- 3) Disallow new or increased installment debts for non-essential items during the forbearance period. These are considered to be expenses not directly essential to the mortgagor's health, employment, or modest transportation needs.
- 4) Do not arbitrarily change amounts of expenses listed by mortgagors; consider each case on its own merits. If changes are made the mortgagor should be contacted and the result documented.

- 5) Expenses for utility costs can either be averaged over the year or seasonally adjusted to allow variable payments.
- 6) Standardized tables for food, living expenses, utilities, or home maintenance are often available from State agencies or HUD's area economists. However, such tables must be used merely as guides in analyzing the mortgagor's expenses, not used to force a subsistence lifestyle upon the family.

4-7. RELIEF FOR AUTOMATIC ASSIGNED MORTGAGES, AND OWNER OCCUPIED PMMs.

- A. Occasionally, short-term difficulties cause an otherwise dependable mortgagor to be delinquent. Often, HUD's best interest is to accept partial payment rather than to foreclose.

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- B. Field offices may accept partial payment, but must first document the following:

- 1) The mortgagor has not, previously, been provided relief by HUD,
- 2) Cause of delinquency must have been beyond the mortgagor's control,
- 3) There must be a reasonable prospect that the mortgage and delinquency can be paid by the maturity date, extended by up to 10 years if necessary.

- C. No assistance can be provided for more than 36 months.

4-8. PROVIDING COUNSELING.

- A. Field offices must offer counseling through a HUD-approved housing counseling agency to every mortgagor accepted by HUD for assignment. Do not initiate the offer to those who are under an approved bankruptcy plan; however, you may suggest counseling through the trustee or mortgagor's attorney. Field offices must tell mortgagors about available counseling in:

- 1) The assignment acceptance letter
- 2) Any written request for financial information for use in establishing or revising a forbearance agreement.

NOTE: While it is not required that mortgagors with Prams be referred to counseling, it is strongly advised, if such mortgagors become delinquent.

- B. When the services of a HUD-approved counseling agency is available, field offices will refer mortgagors to such agencies for service. Upon request for counseling, refer the mortgagor to the agency, taking into consideration:
- 1) that travel time from home or work to the counseling agency should not exceed 1 hour (in urban areas) or 2 hours (in rural areas), or
 - 2) whether public or private transportation is available.
- C. Homeownership Counseling Services By Counseling Agencies. Services must include those required by the Housing Counseling Handbook 7610.1 Rev., and if applicable, the grant document.
- D. Length of Counseling. It should be available to assigned mortgagors during the entire term of the mortgage, including any period of extension.

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- 4-9. SUPERVISORY RESPONSIBILITIES. This chapter has been designed to define HUD's standards for servicing the delinquent mortgage. What should be clear is that while servicing and collection activities go hand-in-hand they are different. HUD does have a right to pursue payment of the indebtedness, but the zealotness of that pursuit must be tempered with reason and based on thorough information gathering and documentation, as well as the exercise judgment.

The following excerpt from the Amended Stipulation, dated August 2, 1979, in the Farrell case is most pertinent;

"7) HUD shall review and, as appropriate, restructure payment plans of assigned mortgages (emphasis added) to ensure that they are reasonable and comport with 24 C.F.R. 203.650-662 and Handbook 4191.2 under the following circumstances:

- a. Before any action has been taken by reason of mortgagor default;
- b. When the terms of such a plan expire;
- c. When a plan is in default for three months or longer;
- d. When the terms of an existing plan extend more than six (6) months from the Order date;
- e. When a mortgagor so requests for good cause." (emphasis added)

While the term of that stipulation has expired, HUD desires that equivalent standards apply.

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Exhibit 4-2

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Exhibit 4-3

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Exhibit 4-4

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Exhibit 4-5.2

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CHAPTER 5 - FORECLOSURE

5-1. FIELD OFFICE RESPONSIBILITIES BEFORE RECOMMENDING FORECLOSURE

Foreclosure, or the threat of foreclosure, should not be used unless the office intends to foreclose. Foreclosure is the last resort after it is evident that the mortgagor cannot, or will not, meet the mortgage obligation. Before recommending foreclosure:

- A. Assure that all required and reasonable servicing actions have been undertaken and efforts exhausted.
- B. Encourage sale, by the mortgagor, as an alternative to foreclosure (this includes sale by assumption of the mortgage), but do not delay foreclosure for this reason.
- C. Suggest the offering of a deed-in-lieu of foreclosure by the mortgagor (see Paragraph 5-8 on deeds-in-lieu). (This does not apply to investors.)

The encouragement of a sale or the suggested offering of a deed-in-lieu of foreclosure should be by active (if possible face-to-face) and direct methods rather than passively subsuming it in the text of a letter without explanation or elaboration.

- D. If the field office determines that the property has little, or no, residual value, the case should be placed on an inactive status and foreclosure avoided.
- E. Where there are high municipal liens on a vacant/abandoned property, which would prove a major liability to anyone acquiring title, placement of a property on an inactive status may also be an appropriate alternative, though the property has substantial residual value.

5-2. PROCEEDING TOWARDS FORECLOSURE. Foreclosure actions start with the preparation of a Notice of Intention to Foreclose.

- A. Before determining the amount required to bring the mortgage current:
 - 1) On all accounts with account numbers beginning with 07, check Loan Screen 2 (LNS2) for the Code 12 indicating that a Post Audit has been completed. Call the Service Center to request a Post Audit if the Code 12 is missing.

- 2) If the account is a Graduated Payment Mortgage (GPM), notify the Service Center to have the account adjusted before preparing figures.

This amount should include all known charges against the account, for example: taxes paid but not posted. Perform a manual escrow analysis, taking into account any shortages or excess funds.

- B. Complete and mail a Notice of Intention to Foreclose and Accelerate Mortgage Balance and to Report to Credit Bureau (NOI), giving the bring-current amount and 30 days to respond. The NOI must be sent to the mortgagor by certified mail. (See Exhibit 5-1.1). This is a new NOI and previous versions are obsolete.

NOTE: If the mortgagor has filed a Petition in Bankruptcy, the Acceleration Notice may not be sent to the mortgagor while the bankruptcy stay is effective. (See Bankruptcy, Section 9).

- C. At the time the NOI is sent, the field office must file-maintain Loan Screen One (LNS1):

- 1) Change the Pay Option Code to 9 to stop the sending of bills;
- 2) Enter 21 (Accept no Payments) and 38 (Send no Mail) in the Condition Codes to alert the System not to accept and apply any partial payments, or send mail.

NOTE: The field office may annotate LNS3, under comment, with the amount it considers substantial enough to consider reinstatement.

- D. Substantial Payments. In the case of the original mortgagor the substantial payment should, at least, clear up the delinquency under the prior forbearance agreement, or as much as 50 percent of the mortgage delinquency, whichever is greater, unless the field office determines that a lesser amount is appropriate.

- E. Acceptance of a Partial Payment after Mailing the NOI.

- 1) If the mortgagor tenders less than what the field office considers a substantial payment towards the delinquency, it should be accepted. But, if the field office desires to continue with foreclosure, send a new NOI containing both a new bring-current amount, and substantial payment amount, to the mortgagor before requesting foreclosure. (See Exhibit 5-1.2.)

NOTE: This does not necessitate an extension of the 30-day

period, if reinstatement doesn't occur; however, the NOI should state that the money will be applied against the delinquency-but does not satisfy the amount needed to consider reinstatement, and make it clear that the original 30-day term applies.

- 2) Where the amount tendered represents a significant proportion of the "substantial payment" the field office, at its discretion, may grant an 30-day term to allow for resolution.

NOTE: The field office shall not use this procedure to incrementally make up the entire delinquency by stringing the mortgagor along beyond that point which, originally, would have been viewed as a substantial amount subject to 2 D.1 (above).

F. The System is designed to treat payment as an exception when a Code 21 is in place. Therefore, OFA's Single Family Notes Branch's Cash Control Staff will contact the Field Office to inform you of the payment's receipt. All payments received prior to actual recommendation of foreclosure shall be accepted. The field office must then decide whether to:

- 1) Act in accordance with 5-3., below, or
- 2) Continue to foreclose after following the instructions in this section (2).

5-3. MORTGAGOR RESPONSE TO THE NOI. The period between the sending of the NOI and the actual referral of a case to foreclosure is not the last opportunity for resolution. However, it may be the last opportunity to avoid incurring foreclosure costs by HUD.

A. If the mortgagor responds to the Notice, the field office shall withhold further action leading to foreclosure under the following conditions:

- 1) The account is fully reinstated.

- 2) The account is paid in full.
- 3) The mortgagor tenders an acceptable deed-in-lieu of foreclosure. (The deeding is not complete until actual title approval.)
- 4) The mortgagor has entered into a contract with a purchaser which will result in one of the following within 60 days:

- a. Payment in full.
 - b. Full reinstatement through assumption.
 - c. Assumption without full reinstatement acceptable to the field office. (See 5 below.)
 - d. If the mortgage is being assumed by a mortgagor who is not an owner-occupant, the mortgage must be brought current.
- 5) The mortgagor, or occupant assumptor, makes a substantial lump-sum payment towards the delinquency and enters into a forbearance agreement.

If the mortgage has been held by the Secretary for more than 36 months, or in the case of an assumptor, the forbearance agreement must provide for no less than a regular mortgage payment.

- B. If resolution is accomplished, change Pay Option Code to 4, remove Condition Codes 21 and 38, and establish the forbearance screen (if appropriate). If a deed-in-lieu is accepted, see Section 8 of this chapter.

5-4. INITIATING FORECLOSURE

- A. If resolution does not occur, or if the mortgagor does not respond after issuance of the NOI, the field office must promptly recommend foreclosure after the 30-day period expires.

NOTE: Due to the terminal nature of a foreclosure action recommendations must be fully supportable. Recommendations made to achieve goals, in lieu of appropriate servicing activities, will not be tolerated. Similarly, system encoding must accurately reflect case status. Each recommendation must have supervisory review and approval, and that review may not be of a cursory nature nor a superficial inspection of the Foreclosure Checksheet, HUD-92218, (Exhibit 5-2).

- B. In most cases forward the original foreclosure recommendation to the Office of General Counsel, Home Mortgage Insurance (GHH) using the memorandum in Exhibit 5-3 along with the Tax Data Card or data from CPPS; a copy of the NOI; and, a completed foreclosure checksheet. A completed HUD-698, Statement of Account, and all pertinent legal instruments required for foreclosure processing must also accompany the recommendation. If the original Title File is unavailable the field office must obtain certified copies of the legal instruments.

EXCEPTION: Only GPMs, Bulks, and other special loans shall continue to be forwarded to OFA. All other cases must be forwarded to OGC. Remember to submit the legal file with your recommendation. Instructions for the preparation of the HUD-698 are contained in Exhibit 5-4.

- C. Send a copy of the complete foreclosure recommendation and checksheet to the Single Family Servicing Division in Headquarters.
- D. Simultaneously, file maintain Loan Screen One (LNS1) of the SFMNS by entering a Status Code 41, and annotate Loan Screen 3 (LNS3) with the date foreclosure documents were sent to OGC.
- E. If the account is receiving Section 235 assistance, suspend the subsidy by file maintaining the C235 trailer. (See the SFMNS Users Guide, at 4-31b, for further guidance.)
- F. Check the system's HSTY screen to determine whether payments have inadvertently been applied. If so, follow instructions at 5-2.E (above).

5-5. ACTION BY THE OFFICE OF GENERAL COUNSEL

- A. The account will be assigned to a foreclosure agent by OGC. That agent is under contract to HUD to foreclose the mortgage.
- B. Field offices will receive a copy of OGC's referral to the agent. Only if the field office does not receive that copy within 60 days of the date on LNS3 (see 5-5A., above) should any inquiry be made of OGC regarding the case's status. Once that copy is received, no inquiry shall be made of OGC except in cases of suspensions or termination of foreclosure, or bankruptcy.

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- C. Foreclosure attorneys are required to obtain updated 698 data just prior to foreclosure and, with the exception of bidding instructions related to efforts to avoid acquiring title at the foreclosure sale, there should be no other direct contact with the foreclosing agent or the foreclosing attorney. All other contacts with these agents are to occur through OGC, with the exception of the notices of occupied or vacant conveyance (an informal notification to the foreclosing attorney may supplement this only where the foreclosure sale is imminent). The foreclosing agent will be requested to notify the field office whether the property is occupied or vacant.

NOTE: If the property is occupied, the Property Disposition Section shall commence the occupied delivery procedures as prescribed in outstanding instructions (memorandum entitled: Occupied Conveyance, dated August 15, 1984). Unless notified to the contrary, the foreclosing agent will convey the property to HUD unoccupied.

5-6. SUSPENSION OR TERMINATION OF FORECLOSURE

If a suspension or termination of foreclosure is desired, after the foreclosure recommendation has been sent to OGC, contact OGC immediately by phone (FTS 755-7080), with confirmation in writing (do not send a copy to OFA). Under no circumstance shall the foreclosure agent, the attorney, or OFA be contacted directly. Contact OGC when partial payments have been inadvertently applied to the mortgagor's account.

A. Reasons for Suspension of Foreclosure

- 1) Filing bankruptcy
- 2) Fruitful negotiations with the mortgagors which will lead to a resolution similar to those described in 5-3A (above), but which may extend beyond the date of the sheriff's sale.
- 3) Regional or Headquarters review, for cause, of a case in foreclosure.

B. Reasons for Termination of Foreclosure

- 1) The mortgagor performed adequately under and outside of the bankruptcy plan.

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- 2) Reinstatement, payment-in-full, etc. has occurred. (Foreclosure costs incurred by the Department must be secured from OGC and considered as part of the resolution.)
 - 3) The condition of the property has been found to meet the criteria for placement under inactive status.
 - 4) Acceptance of a deed-in-lieu of foreclosure. At the request of the field office, OGC will instruct the foreclosure agent to prepare and record the deed. As part of its foreclosure processing, the foreclosure agent will have determined whether there are any other outstanding liens.

C. SFMNS File Maintenance Requirements when Foreclosure is Terminated.

When foreclosure has been terminated:

- 1) Remove Condition Codes 21 and 38, and Status Code 41; and,
- 2) Except for inactive cases, change the pay option code to 4.

NOTE: In the case of a reinstatement, check that reinstatement funds have been applied (and, where applicable, a forbearance agreement established) to avoid the mortgage being billed as delinquent.

5-7. SPECIAL FORECLOSURE SITUATIONS. Vacant Properties, Rentals, and Junior Liens (Special conditions not described below may require the field office to seek advice from the Secretary-Held and Counseling Services Branch, Headquarters (HSSL) before action).

A. Abandoned or Vacant Properties.

- 1) The mortgagor's intent to protect the property should be determined by contacting him/her. Under unusual circumstances, it might be necessary for HUD to protect and preserve the property when the mortgagor is unable or unwilling to take protective measures.
- 2) If the only payments being applied to the account result from assistance or buy-down, then:

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- a. The Section 235 assistance must be suspended and reversed to when the vacancy occurred (unless the vacancy is temporary and approvable); or,
- b. The buy-down escrow agent should be informed, in writing, to suspend remittances until further notice. After foreclosure (or a deed-in-lieu) is completed, the field office must make demand of the escrow agent for the escrowed funds.

In both situations, noted above, OFA must be notified.

- 3) Initiate foreclosure once it has been firmly established that the property has been abandoned or vacant for more than 60 days, and the mortgagor cannot be located.
- 4) In the foreclosure recommendation, advise OGC that the property has been vacant for more than 60 days, and the mortgagor cannot be located.
- 5) Immediately, request Property Disposition to take protection and preservation measures to avoid depreciation and vandalism. The mortgagor continues to own the property until title has been

transferred. Also, be sure that no personal property, regardless of its condition, is removed from the property.

The only authorized expenditures are for securing the property, this does not include yard maintenance. The Department is to merely take actions required to protect its mortgage security, as permitted by the mortgage instrument. HUD Handbook 4310.5, Property Disposition Handbook, paragraph 95, provides procedures and authority for protection and preservation of SH mortgaged property.

- B. Rental Property. Providing that servicing standards have been met, the fact that the property is occupied by other than the homeowner should not be a deterrent to recommending foreclosure.
- 1) Occupancy, even by other than the mortgagor, may reduce the potential of vandalism.
 - 2) Prior to accepting rental payments from tenants of the mortgagor, field offices must consult field counsel.

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If counsel approves field offices may accept rent or other payments from non-owner occupants when tendered on a delinquent account. However, such payments must be clearly identified and placed in an escrow account to be applied or disbursed depending on the accounting after final disposition of the foreclosure. Such receipt should be sent directly to the Post Insurance Division, AFMP, with a covering instructional memorandum.

- C. Foreclosing Junior Liens. Most SHMs are first liens and the foreclosure by a junior lien holder means that the field office will have to work with a replacement mortgagor. Field offices must be sure that they are familiar with all foreclosure laws for the states in which they have jurisdiction. Notice of a foreclosure action by a junior lien holder must be referred immediately to field counsel.

The replacement mortgagor must be viewed in the same way as an assumptor. That is, if the account is delinquent, it must be brought current either immediately or through a forbearance agreement.

The same conditions must be met as with an ordinary assumption that does not bring the account current (see 5-3A above). Failure to accomplish either requires the field office to recommend foreclosure.

- D. Federal Interest in Junior Liens

- 1) Most junior liens are held by private parties. However, there

are instances where the junior lien will be federally insured, or held by a federal agency. Such examples are Title I and Section 312 loans.

- 2) It is not in HUD's interest to have a junior Title I or Section 312 loan foreclosed where there is an active and successful repayment plan addressing the problem of a delinquent SHM. Nor, would it be in HUD's interest to sue to collect on a judgment under similar circumstances.
- 3) Field offices must coordinate their collection activities with the best interests of the Secretary always in mind, especially where Title I or Section 312 loans are involved. Case records should be adequately "flagged" where HUD junior lien is known to exist. The SFMNS loan monitoring screen should be used for this purpose.

- 5-8. DEEDS-IN-LIEU OF FORECLOSURE. A deed-in-lieu, generally, is acceptable only if the property is free of all liens other than the Secretary-Held mortgage. This is because a deed-in-lieu obligates HUD to those junior liens. The deed should not be recorded until it is established by Field Counsel that there are no other liens.

However, the existence of a junior lien is not, of itself, reason to reject a deed-in-lieu. The fact that HUD is intent upon foreclosure can be used to negotiate compromises of smaller junior liens. As a "rule-of-thumb", if junior liens can be compromised for less than the foreclosure costs, they should. Seek guidance from Field Counsel.

If the office wishes to accept a deed-in-lieu when there are other liens, contact Field Counsel for approval after securing the title documents (see 5-8.B., below). One must remember that judgments against individuals are different from liens against the property, and seek guidance from Field Counsel.

A. General

- 1) A deed given before initiation of foreclosure will rarely affect the mortgagor adversely. When a deed-in-lieu of foreclosure is accepted HUD will not permit the property to be conveyed occupied.
- 2) Up to \$200 may be authorized to be paid the mortgagor. The amount to be paid (if it is a part of the negotiation) must always be the minimum necessary to accomplish the objective. This amount is part of the total anticipated cost of foreclosure.
- 3) Generally a deed-in-lieu will not be accepted from a

corporate mortgagor. Decisions to accept must be considered carefully, especially if the properties are being used for income production. This includes a mortgagor owning two or more properties subject to an FHA-insured mortgage or SHMs builder "bail-out" situations, or someone taking title through foreclosure of a junior lien.)

- 4) Generally, HUD will not accept a deed-in-lieu on the residual properties resulting from bulk-sales. HUD's intent in entering into bulk-sales agreements was not to take back the worst properties after the purchaser spun-off and sold the best. The mortgagor shall be informed that HUD will actively pursue a deficiency judgment if foreclosure does occur. (Waiver of this policy may be requested of the Director, Office of Insured Single Family Housing, (HSS) where documentation will support an extension of mortgage term).

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If the properties are deteriorated, they should be placed on inactive status, as you would any other property. If any irregularities are detected concerning the mortgagor's handling of a bulk sale mortgage (such as equity-skimming), the case should be referred to the Office of the Inspector General for investigation.

- 5) Need for a title search:
 - a. Deeds-in-lieu of foreclosure must be supported by a title search indicating no subordinate liens; or,
 - b. If a title search indicates subordinate liens, those liens must be able to be compromised for less than the cost of continuing foreclosure.

NOTE: Where the property is subject to a Section 235 Recapture Lien, a deed-in-lieu will not wipe-out the lien. However, the mortgagor's disposal of title, with no gain, eliminates the potential of recapture.

If a property is subject to Title I or Section 312 liens a deed-in-lieu does not wipe out those liens. Those liens must be satisfied prior to disposition. Loan management must discuss satisfaction of these liens with the other HUD program areas before the deed is accepted.

B. Legal Representation Involving Deeds-in-Lieu

- 1) If the case has been referred for foreclosure, inform OGC so it

may have the foreclosure agent handle the matter. Otherwise, the field office is authorized to engage an attorney or title company to represent HUD. In the latter event, provide the following documents to the attorney or title company:

- a. The original security instrument and note.
- b. Title evidence held by the Secretary, if available.
- c. Form HUD-2319, Attorney's Certificate of Title or, Title Policy, as appropriate.
- d. Deed to Secretary, if one has been obtained, or a request that one be prepared for the mortgagor's(s') signature.

- 2) Marketable Title. Before preparation or recording the deed, the attorney of title company must examine the condition of the record title. The deed should not be recorded if there are outstanding encumbrances other than the HUD mortgage, current taxes and assessments, or customary easements, mineral reservations or restrictions of the type waived by Section 203.389 of the HUD Regulations.
- 3) Approval of Acceptance by Field Counsel. If encumbrances or liens appear on record, the Field Counsel must be consulted concerning acceptance of the deed. All particulars of the case, including all available information or status of the encumbrances, will be presented to the Field Counsel with the recommendation of the attorney or title company, and the field office with respect to possible compromise of the objectionable liens.
- 4) Satisfaction or Release from Liability. If there were no questions regarding marketability, or when the Field Counsel has approved acceptance of the deed-in-lieu where there are objectionable liens outstanding the attorney or title company will have a deed prepared, if not already provided by the mortgagors, and recorded after execution. At the same time, the Satisfaction or Release should be prepared for the field office's execution and recorded immediately following the deed-in-lieu.
- 5) Title Evidence.
 - a. Once the deed has been recorded, the attorney or title company, must provide title evidence to the date of recording that certifies good marketable title vested in the name of the Secretary of Housing and Urban Development, c/o (appropriate Field Office having jurisdiction) his

successors and assigns. (If evidence is provided pursuant to the title binder program, it should insure the Secretary of Housing and Urban Development, c/o (appropriate Field Office having jurisdiction) his successors and assigns, or the Secretary's purchaser.) The type of title evidence can be no less than that customarily used in the area where the property is located.

- b. The attorney or title company, should return the recorded deed, along with the new title evidence and bill for services and costs, to the field office. The recorded satisfaction or release should be given to the former mortgagor(s). The title docket and final title evidence should be submitted to Field Counsel for approval prior to being forwarded to the Property Disposition Branch.

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5-9. BANKRUPTCY AND FORECLOSURE

- A. Bankruptcy Petition. A Petition filed under the Bankruptcy Act operates as a "stay" which prohibits any activity to collect a claim against the debtor or to obtain possession of his property.

When the field office receives a Notice of Bankruptcy, there may be no further contact initiated by HUD with the mortgagor concerning the existing delinquency. All collection efforts under the mortgage or forbearance agreement shall cease and neither the Notice of Intent to Foreclose nor the Occupancy Notice may be sent to the mortgagor. Follow the instructions outlined in Chapter 6.

- B. Bankruptcies Occurring After a Case has been Referred to Foreclosure. OGC should be informed, immediately of the bankruptcy. Thereafter, all actions will be the responsibility of the foreclosure agent.
- C. Bankruptcies Occurring Before the Sending of the NOI.
 - 1) If, after the Payment Plan is commenced, all payments under or outside the plan are not received as scheduled for a 90-day period the field office should refer the case to OGC for foreclosure, but shall not send the mortgagor collection letters or a NOI. The field office may inform the mortgagor's attorney or the trustee of its intent.
 - 2) If the mortgagor makes payments both inside and outside of the plan for a 90-day period, OGC will reassign the case to the field office for servicing pursuant to the terms of the Plan, and that payments, both inside and outside the Plan, should be sent to HUD pursuant to its instructions.

At this point, the field office would assume responsibility for monitoring of the account as outlined in Chapter 6.

D. Foreclosures After Bankruptcy.

If the bankruptcy case has been dismissed, or the mortgagor discharged by the Bankruptcy Court, a Notice of Intent to Foreclose may be sent to the mortgagor and the case treated like non-bankruptcy cases. A copy of the dismissal or discharge order must be attached to the request for foreclosure and forwarded to OFA along with your recommendation. The system codes must be updated, as appropriate, by inserting Condition Codes 21, 38, and Status Code 41. Delete Status Code 46.

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Exhibit 5-1.1

NOTICE OF INTENTION TO FORECLOSE AND ACCELERATE MORTGAGE BALANCE
AND TO REPORT TO CREDIT BUREAU

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Exhibit 5-2

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Exhibit 5-3

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Exhibit 5-4.5

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Exhibit 5-4.6

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Exhibit 5-4.7

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CHAPTER 6 - BANKRUPTCY

- 6-1. GENERAL. Bankruptcy provides a legal avenue for persons to obtain relief from their debts based on statutes administered through Federal Bankruptcy Courts.
- A. When the field office receives a Notice of Bankruptcy, there must be no further contact with the mortgagor except as provided in paragraphs B and I below. All collection efforts under the mortgage or forbearance agreement must stop, and neither the notice of intent to foreclose nor the occupancy notice may be sent to the mortgagor. This "stay" continues until the Bankruptcy Court dismisses the bankruptcy case, discharges the mortgagor or lifts the "stay".
 - B. If the mortgagor initiates communications, the field office can provide strictly factual information regarding the regular mortgage payment BUT MUST NOT ENTER INTO ANY DISCUSSION REGARDING THE DELINQUENCY COVERED BY THE BANKRUPTCY. The mortgagor may be informed of the amount of the regular mortgage payment only and where it should be sent and that HUD will not send bills for it. More detailed discussions may be entered into with the mortgagor's attorney and the trustee.
 - C. To prevent billing by the SFMNS, the field office must:
 - 1) file-maintain Loan Screen One (LNS1) and change the Pay Option Code from 4 to 9;
 - 2) enter 46 in the status codes, which indicates Bankruptcy;
 - 3) enter 38 in the Condition Code, which instructs the System to "send no mail"; and,
 - 4) deactivate the Loan Monitoring and Forbearance trailers.
 - D. If the field office receives a notice that the mortgagor has filed a petition in bankruptcy after the field office has referred the case for foreclosure, the field office should call OGC immediately. If the mortgage has not been assigned to the foreclosing agent, it will be returned to the field office for servicing, including filing the proof of claim. If the mortgage has been assigned to the foreclosing agent, OGC will advise the foreclosing agent of the bankruptcy and the foreclosing agent will file the proof of claim and take such further actions as are required.

- 1) A copy of the note, mortgage and Form [HUD-698](#) should be attached to the Proof of Claim.
 - 2) If foreclosure has been requested notify OGC that a petition in Bankruptcy has been filed and Proof of Claim made so that the foreclosing agent may be advised of the Bankruptcy "stay".
 - 3) OGC should notify the field office and OFA if a payment plan is accepted and in force.
 - 4) If the case in bankruptcy is also in foreclosure remove the Condition Code 21 from LNS1.
- E. A notice of a petition filed under Chapter 13 of the Bankruptcy Act (most mortgagor's petitions are under Chapter 13) will propose a payment plan. The responding Proof of Claim may provide for acceptance or rejection of the plan.

The plan should not be accepted unless it contains:

- 1) an accurate statement of all arrearages,
 - 2) the total amount owed under the mortgage;
 - 3) provision for payment of all arrearages; and,
 - 4) includes interest.
- F. A payment plan usually requires the mortgagor to pay the arrearages to the trustee who will transmit the payments to HUD. These are payments "under" the plan.

The mortgagor is also required to make the current monthly payments whether or not specified in the plan. These are payments "outside" the plan, and are usually made directly to HUD.

- G. If the payment plan does not contain the correct amount owed or does not provide for payment of all arrearages under the plan, a correction may be obtained by notifying the mortgagor's attorney or trustee.

If the attorney or trustee does not make the correction, the case should be referred to Chief or Regional Counsel.

- H. If the mortgage has been assigned to a foreclosing agent for foreclosure, the payments from both the trustee and the mortgagor

will go to the foreclosing agent for three consecutive months. At that point, the foreclosure agent will terminate the foreclosure and return the case to HUD for servicing.

If, on the other hand, the mortgage has not been assigned to a foreclosure agent, and after a payment plan has been approved by the Bankruptcy Court, the field office must:

- 1) Instruct the mortgagor's attorney or trustee to send the court ordered payments to the local office.
- 2) The local office must then forward the payments to the lock box.
- 3) Instruct the mortgagor's attorney that the mortgagor's payments are to be sent to the lock box with the Thrift account number written on the check or money order.

All payments must be closely monitored to determine that the mortgagor is in compliance with the plan.

- I. Payments under the plan should be received each month from the trustee and payments outside the plan should be received each month from the mortgagor.

If either payment is not received initially the trustee and/or the mortgagor's attorney should be contacted to determine that they have the proper address for remittances or to determine whether the plan has been approved.

The mortgagor must not be contacted.

- J. The field office may request foreclosure if no payments are received in 90 days, or if payments are received only "under" or "outside" the plan, or if both payments are not continued for 90 days.
 - 1) A Notice must not be sent to the mortgagor.
 - 2) OGC will assign the case to a foreclosing agent and request that a petition to lift the "stay" be filed.

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- 3) OGC will need:

- a. copies of all documents relating to the Bankruptcy;
- b. the dates and the amounts of all payments received, "under" or "outside" the plan; and,
- c. the "as-is" value of the property. (For this purpose, a formal appraisal will not be necessary.)

- K. If the bankruptcy case has been dismissed or the mortgagor discharged by the Bankruptcy Court, the Field Office must remove Status Code 46 and Condition Code 38 from the SFMNS. Also:
- 1) If the account is current or is being placed under a forbearance agreement, the Field Office must also change the Pay Option from 9 to 4 to permit billing to begin.
 - 2) If the account is to be recommended for foreclosure, the Field Office should not change the Pay Option and should treat the account like a non-bankruptcy case and follow the procedures in Chapter 5. A copy of the dismiss or discharge order must be sent to OGC with the request for foreclosure.

CHAPTER 7 - 5SECTION 235 RECAPTURE MORTGAGES

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CHAPTER 8 - SERVICING MORTGAGES WITH BUY-DOWN AGREEMENTS

- 8-1. GENERAL. Some of HUD's assigned mortgages will have buy-down agreements in effect when they are assigned. These agreements provide for a portion of the monthly payment to be paid by a third party in behalf of the mortgagor. For a general understanding of buy-down agreements see HUD Handbook 4156.1 REV., Mortgage Credit Analysis Handbook.

The servicing procedures of this handbook are to be followed for mortgages with buy-down agreements except as modified in this chapter.

8-2. SERVICING PROCEDURES.

A. Assignment Processing.

Buy-down mortgages can be identified by their three digit suffix code in the FHA case number. Codes applicable are: 263, 297, 298, 299, 563, 597, 598, 599, 763, or 797. If a case in assignment review has one of those codes be sure that a copy of the buy-down agreement has been provided by the mortgagee in the assignment package or be sure to check with the mortgagee whether the term of the agreement has expired.

1) Review these agreements carefully and make notes of:

- a. the term of the agreement;
- b. how much will be paid monthly during each year;
- c. when will the mortgagor be responsible for the full payment; and,
- d. what happens to the buy-down escrow upon sale foreclosure, or repayment of the mortgage.

These considerations will be relevant in servicing the account, in reasonable prospects evaluations, in setting up payment plans and forbearance agreements, and informing mortgagors of the effect of these agreements on pay off calculations and prepayments and sales.

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- 2) HUD has not reviewed the terms actually contained in the buy-down agreements at the time of mortgage insurance. You may

find different or additional requirements in specific cases. The agreement is legally binding whether it complies with, or goes beyond, the handbook requirements.

- B. Assignment Acceptance Letter - Content. If the buy-down is still in effect the assignment acceptance letters for these cases must contain the System number; therefore, immediate set up of these mortgages in the System is mandatory. We aim to avoid having the buy-down remittances become unapplied payments.

Also, depending on the date of the assignment acceptance letter, tell the mortgagee whether buy-down payments should be remitted to the lock box on the 1st of the following month or on the 1st of the 2nd month following. This should coincide with the beginning of the mortgagor's payments under a forbearance agreement.

The mortgagee must advise the buy down escrow agent of all the essential payment information within 20 days of the date on the assignment acceptance letter.

- C. Claims and Record Maintenance. Mortgagees have been directed to send the original signed buy down agreement to the jurisdictional field office with that office's copy of the claim (Form [HUD-27011](#)).

You must keep the buy-down agreement and the copy of the mortgagee's notification to the escrow agent administering the buy-down in your servicing file for that mortgagor for at least 3 years after the term expires.

- D. Establishing Accounts in the System.

- 1) The initial loan set up should be established in SFMNS according to the terms of the mortgage. Follow instructions in the SFMNS User's Guide.
- 2) All cases having buy-down agreements still in effect at the time of assignment must have a 32 entered under Property Class on Loan Screen Two.
- 3) The General Ledger code will be 44 or 63 if the buy down is connected with a fixed rate Section 203 mortgage.

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- 4) For buy-downs connected with Graduated Payment Mortgages the GL code will be 57 or 73. The 63 and 73 codes identify cases insured under a VA Certificate of Reasonable Value (VA/CRV). These cases have a 563, 597, 598 or 599 suffix code (last 3 digits of the case number).

- E. Forbearance Agreements.

- 1) Payment plans established during the effective term of the buy-down agreement should have two parts: the mortgagor's portion; and the buy-down portion (similar to a Section 235 with assistance). Payment plans for the mortgagor's portion must be developed following outstanding requirements. It may be helpful to have payment plans coincide with changes in the buy-down provisions.
- 2) Inform mortgagors that:
 - a. If for any reason the escrow agent does not send the buy down payment, the mortgagor is responsible under the mortgage and note for the entire payment.
 - b. If a delinquency notice is received that indicates a failure of the escrow agent to remit payments, the homeowner should immediately notify the HUD Office.
- 3) The amount entered on the forbearance trailer must be the total payment (the mortgagor's portion plus the buy-down portion).
 - a. However, the written forbearance agreement must clearly advise the mortgagor of the amount to be paid. Also, the mortgagor must be advised not to pay the total which will be on the bill. This will be similar to a Section 235 forbearance agreement.
 - b. Until a forbearance agreement is executed and effective, insert Pay Option Code 9 and Condition Codes 38 and 36 on LNS1 (send no bill/send no mail/no late charges).
 - c. The month before the forbearance becomes effective activate the forbearance trailer in SFMNS after the late charge date and before the bill issuance date. Be sure that when you do this you change the Pay Option Code to 4 and remove Condition Codes 38 and 36 mentioned before.

If an account is in the System before the 16th and no payment is applied, the System will charge a late charge and send a delinquency notice unless coded as described above. However, when you want the billing to start you must activate or enter the forbearance agreement and remove the condition codes so that 10 days before the end of the month a bill will be sent to remind the mortgagor to begin paying on the 1st of the following month. (For further details review SFMNS User's Guide Chapter 4 paragraph 4-16M.)

- 4) The loan monitoring trailer must be used to track the buy-down

with information such as:

- a. 60 day advance notice of each buy-down payment change
- b. 60-day advance notice of termination of the agreement (i.e., enter month escrow funds are expected to terminate).

F. Foreclosure of Mortgages During the Term of the Buy-Down Agreement.

- 1) Closely monitor the mortgagor's performance under a forbearance agreement, especially for the first few months. Depending on the term remaining under the buy-down agreement, decide when the mortgagor fails to perform whether it is best for the Department to:

When you initiate foreclosure proceedings notify the buy-down escrow agent to suspend payments under the agreement until further notice.

- 2) The buy-down agreements are supposed to provide that the mortgagee acquiring title in a foreclosure is entitled to any unexpended buy-down funds. If you have a buy-down mortgage being recommended for foreclosure contact your desk officer in the Secretary Held and Counseling Services Branch for special instructions for the foreclosing agent to be included in the recommendation for foreclosure.
- 3) If foreclosure is withdrawn for any reason you must notify the escrow-agent to forward in a lump-sum any payments due and unpaid and to begin regular monthly remittances to the lock box again if buy-down funds continue to be available.

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- G. Sale of the Property by the Mortgagor During the Term of the Buy-Down Agreement. When you become aware of a sale by assumption or payoff, examine the buy-down agreement to see if it will terminate or remain in force for the benefit of the new purchaser.

If the agreement is to terminate, see how the undistributed funds are to be handled. If the payoff statement is affected or the application of funds is specified, inform the mortgagor and, if necessary, notify the Service Center of any special payment application provisions.

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