

CHAPTER 3. AMENDMENTS AFTER THE MORTGAGE HAS BEEN INSURED

3-1 GENERAL. The mortgagee and mortgagor may agree to change the mortgage instruments or otherwise change the nature of the obligation or the security after the mortgage has been insured. (See Chapter 8 with regard to forbearance agreements.)

NOTE: Mortgagees are reminded that when making decisions as to whether a change should be made to an existing mortgage, they are expected to abide by the Fair Housing Act, the Equal Credit Opportunity Act, Executive Order 11063, and HUD regulations issued pursuant to these authorities, prohibit discrimination in all phases of mortgage lending, including discrimination in revisions to existing mortgages and in the treatment of mortgages on which payments may or may not be current. Prohibited basis of discrimination include: race, color, religion, sex, handicap, familial status, national origin, age and public assistance as a source of income.

A. Changes Not Requiring HUD Approval.

1. A modification (recasting) when the recasting is limited to the remaining term of the mortgage or to a term extending not more than 10 years beyond the original maturity date and the requirements of 24 CFR 203.614(b)(1) are met:
 - a. the mortgagor does not own other property subject to a mortgage insured by the Secretary; and
 - b. the default was caused by circumstances beyond the control of the mortgagor.
2. A reduction of interest rate (see Paragraph 3-6).
3. A partial release of security resulting from condemnation when the requirements of 24 CFR 203.389(n) are met. (See Paragraph 3-3.)
4. A change of location after insurance in emergency circumstances. (See Paragraph 3-4.)

3-19/94

4330.1 REV-5

B.Changes Requiring HUD Approval.

- 1.Extension of term of a recast mortgage for more than 10 years beyond the original maturity date.

2.A modification (recasting) when the requirements of 24 CFR 203.614(b)(1) are not met (see Ala and b above).

3.A partial release of security not resulting from condemnation, or when the requirements of 24 CFR 203.389(n) are not met.

4.A change of location after insurance in other than emergency circumstances. (24 CFR 203.343)

5.The mortgage payment is increased over \$100 per month, the mortgage term is decreased, and the mortgage is 3 years old or less.

3-2RECASTING (MODIFYING) A MORTGAGE (24 CFR 203.342 and 203.616). When (1) a mortgage is in default, (2) certain criteria are met and (3) a mortgagor and mortgagee are in mutual agreement, the amortization provisions of the mortgage may be modified by recasting the total unpaid amount due under the mortgage (also, see Paragraph 8-6). This unpaid amount then becomes the new original principal balance due over the remaining term of the mortgage loan or a longer term.

If a mortgage has been pooled, the mortgagee is advised to first check the requirements of the agency which has securitized the mortgage.

A.Purpose. The reason for recasting (modifying) the mortgage is to cure a delinquency when a mortgagor does not have the financial ability to reinstate his mortgage by paying a sum in addition to the regular monthly mortgage payment sufficient to bring the mortgage current over a reasonable period of time as in a forbearance agreement or an assignment of the mortgage to HUD. Rather than permit this delinquency to continue indefinitely or to initiate foreclosure, the mortgagee (with the agreement of the mortgagor) has the option of recasting (modifying) the mortgage. Recasting may be refused at the sole discretion of the mortgagee.

9/943-2

4330.1 REV-5

B.Criteria - When HUD Approval Is Not Required. A mortgagee may permit a recasting of a mortgage without HUD approval when all of the following circumstances exist:

1.the default was caused by circumstances beyond the control of the mortgagor;

2.the mortgagor does not own other property subject to a mortgage insured by the Secretary; and

3.the recasting is limited to the remaining term of the mortgage or a term extending not more than ten (10) years

beyond the original maturity date.

NOTE:Documentation that these conditions were met must be retained for HUD review. A claim may be curtailed if such documentation cannot be provided upon request.

C.Criteria - When HUD Approval Is Required. Prior HUD approval is required in order to recast a delinquent mortgage when:

1.the term is extended more than 10 years beyond the maturity date of the original mortgage, or

2.the mortgagor has more than one property subject to a mortgage insured by the Secretary.

NOTE:The modification agreement may be effective when executed or upon the termination of a forbearance period.

D.To Obtain HUD Approval. The following shall be forwarded to the HUD Field Office having jurisdiction over the mortgaged property:

1.the proposed recasting (modification) agreement or amended note (the original and one copy);

2.the calculation of the recast principal amount, if applicable, and the new monthly payment; and

3.a letter explaining:

a.the reasons for the delinquency;

3-39/94

4330.1 REV-5

b.the need for extending the maturity of the note more than 10 years; and/or

c.the need for recasting the mortgage of a mortgagor owning another property with a mortgage insured by the Secretary.

NOTE:The Field Office manager's approval will be indicated on the copy of the agreement or amended note. If approval is not warranted, the agreement or amended note will be returned with a letter of explanation. (Appendix 3 shows a sample letter to HUD, Appendix 4 shows a sample Recasting Agreement and Appendix 5 shows how to calculate the recast principal amount and new monthly payment.)

E.How Recasting Can Be Accomplished. Recasting may be accomplished by:

1.amendment of the original note with all parties initialing all changes made to the original note; or

2.execution of a recast (modification) agreement by all parties concerned.

F.Amount Of Recast Mortgage.

1.Included is the total unpaid amount due and payable under the mortgage (i.e., principal, interest, escrow items, late fees, etc.) which becomes the new original principal amount of the mortgage (24 CFR 203.616 and 203.342).

NOTE:Under no circumstances may the recasting agreement increase the interest rate. Also, note that any unpaid escrow items added to the principal must be credited to the mortgagor's escrow account.

2.Excluded are:

a.any legal or administrative costs attributable to the recasting, since these costs are not due and payable under the mortgage, though they may be collected separately from the mortgagor; and

9/943-4

4330.1 REV-5

b.any revision of periodic (monthly) MIP payments.

NOTE:A recasting (modification) of the mortgage has no effect on the one-time MIP or on periodic MIP payments. Monthly MIP payments must continue to be calculated based on the original amortization provisions of the mortgage (24 CFR 203.261).

G.Recordation Of Lien. The mortgagee is responsible for the legal steps required to accomplish the recasting and for ensuring that the mortgage remains a valid first lien against the property.

H.Notification To HUD (24 CFR 203.616(b)). When HUD approval is not required, the mortgagee shall notify the local HUD Office with jurisdiction over the property of a modification within 30 days of the execution of the modification agreement.

I.Documentation Required. Documentation must be retained for HUD review and/or to be provided upon request by HUD (and/or its agent) showing:

1.the criteria for recasting (modifying) a mortgage with or

without HUD approval, as appropriate, were met;

2.the calculation of the recast principal amount and the new monthly payment amount; and

3.proof that any unpaid escrow added to the new principal amount was credited to the mortgagor's escrow account.

J.Submission Of Claim To HUD. If and when a claim for insurance benefits [HUD-27011 (Appendix 6)] is filed:

1.a copy of the recast (modification) agreement executed by both parties (or the modified credit instrument with all changes initialed by all parties) must accompany the claim;

2.the instructions issued by HUD for properly filling out the claim form (HUD-27011) for a recast mortgage must be followed; and

3-59/94

4330.1 REV-5

3.if requested, documentation must be submitted to show that the required criteria for recasting were met.

3-3PARTIAL RELEASE OF SECURITY. All requests for HUD approval must be submitted in writing, in duplicate form, to the local HUD Field Office having jurisdiction over the mortgaged property. The mortgagee shall be notified in writing of the local HUD Office's decision.

NOTE:The mortgagee remains responsible for assuring that HUD's insured mortgage remains a valid first lien on the mortgaged property after the release has been accomplished.

A.When HUD's Approval Is Not Required (24 CFR 203.389(n)). HUD approval is not required for the voluntary or involuntary conveyance of a part of the property as the result of condemnation or in lieu of condemnation (also, see Paragraph 3-1A) if the following conditions are met:

1.the part being conveyed does not exceed ten percent of the area of the mortgaged property;

2.there has been no damage to existing structures or other improvements, and there in no unrepaired damage to sewage, water, or paving;

3.any compensation that may have been received has been applied to reduce the unpaid principal balance of the mortgage;

4.the voluntary or involuntary conveyance occurred after the

mortgage was insured;

5.if a claim for mortgage insurance benefits is filed, it is accompanied by the mortgagee's certification that the requirements of this paragraph have been met.

NOTE:If any of the conditions in this paragraph are not met, HUD approval is required prior to any portion of the security being released.

B.When HUD Approval Is Required (24 CFR 203.343(a)). Letters requesting HUD approval are to be submitted in duplicate form to the HUD Field Office having

9/943-6

4330.1 REV-5

jurisdiction over the mortgaged property. The request letter must be accompanied by the following:

- 1.a statement as to the present status of the mortgage;
- 2.the amount of the unpaid principal balance;
- 3.the due date of the last unpaid installment and, if the mortgage is delinquent, the number of delinquent payments;
- 4.a list of unpaid special assessments (if any) and the amounts owed for each;
- 5.a complete legal description of the portion of the secured property to be released;
- 6.the mortgagor's reasons for asking the mortgagee to make the release;
- 7.a description of the contemplated use for the land to be released;
- 8.the monetary consideration, if any, to be received by the mortgagor;
- 9.the amount of contemplated prepayment, if any;
- 10.any contemplated restrictions to be imposed on the land to be released;
- 11.a survey or sketch of the property showing the dimensions of the portion to be released, the location of existing and proposed improvements, and the relation of the property to surrounding properties;

12.plans and specifications, including cost estimates, of any alterations proposed for the remaining property after the release; and

13.the FHA/HUD case number of the mortgaged property.

C.Notification To HUD.

1.Within 30 days of the record of the release of security, the mortgagee will submit a written notification to the HUD Field Office having

3-79/94

4330.1 REV-5

jurisdiction over the property advising the release has been completed. When appropriate, this notification will also advise the amount in which the outstanding principal balance has been reduced.

2.If a claim is filed for insurance benefits, it must be accompanied by the HUD Field Office approval and the mortgagee must also state the amount in which the outstanding principal balance has been reduced.

3-4CHANGING THE LOCATION OF EXISTING IMPROVEMENTS (STRUCTURES). After the mortgage is insured, it may become apparent that the value of the secured property can be protected or enhanced by moving the improvements from the lot on which the appraisal and approval for mortgage insurance was based.

A.Situations Favorable For Relocation. Examples of situations favorable for the relocation of existing improvements (structures) may include, but are not limited to, the following situations:

1.where a property is being condemned or sold for use in connection with public purposes (such as highways, water reservoirs, etc.,) only the use of the land may be needed for the public purpose which would allow the existing improvements on this land to be moved economically to another lot;

2.after the mortgage is insured, it may be discovered that a title defect, zoning, setback restriction, etc., may adversely affect the value of a property and the improvements would be more valuable if relocated;

3.because of a problem not apparent before the mortgage was insured (such as a soil condition, drainage, etc.,) the existing improvements could be more valuable if they were moved to another lot or location; and/or

4.following an earthquake or other disaster, it may be determined that a structure which has sustained little if any damage should be relocated. If the lot is located on or near a geological fault or is otherwise adversely affected by the disaster, continued occupancy of the property may be hazardous.

9/943-8

4330.1 REV-5

B.Relocation Changes Not Requiring HUD Approval. The only time HUD approval is not required for relocating existing improvements (structures) is in an emergency situation where immediate action must be taken by the mortgagee if the safety of the occupants and/or the undamaged condition of the existing improvements are to be preserved. (See Paragraph 3-1A).

1.Financing and Risk Involved in Relocation Changes.

a.Financing. Obtaining the financing for the relocation is the responsibility of the mortgagor and/or the mortgagee.

b.Risk. All risk of damage to the house or failure to complete the move to an acceptable location is borne by the mortgagee. When a temporary move becomes necessary, the mortgagee should ask the Manager of the appropriate HUD Field office, in writing, prior to the move, for written assurance that the mortgage insurance will not be affected adversely during the move.

2.Required Notification Of A Permanent Relocation. Within 30 days of the completion of the relocation change, the mortgagee will submit written notification to the HUD Field Office having jurisdiction over the mortgaged property advising the relocation has been completed. This notification will also provide the following:

a.the FHA/HUD case number of the mortgaged property;

b.the address and legal description of the lot the structure had been moved from and the address and legal description of the lot to which the structure has been permanently moved;

c.a statement from the mortgagee that any damage to the property before, during, and after the move will be repaired at no cost to HUD (24 CFR 203.343);

d.a statement that the lien of the insured mortgage has been extended to cover the new lot; that the mortgage

is a good and valid lien on

3-99/94

4330.1 REV-5

the new lot; and that the old lot has or has not been released from the lien;

e.a statement that the original note is in full force and effect;

f.the outstanding balance of the insured mortgage and its status; and

NOTE:If the mortgage is delinquent, provide the number of payments and dollar amount of the delinquency and an explanation of how the delinquency is expected to be cured.

g.a statement indicating:

(1)that the new lot is in an area known to be reasonably free from natural hazards; or

(2)whether the new lot is located in a flood plain and, if it is in a flood plain, whether:

(a)the community participates in the Federal flood Insurance Program; and/or

(b)the property will be insured against floods.

3.Required Notification Of A Temporary Relocation. In addition to the information required in the preceding paragraph, the mortgagee shall provide HUD within 30 days of the completion of the temporary relocation the following information:

a.the address and legal description of the temporary lot;

b.a statement that:

(1)the move to the temporary lot has been accomplished; and

(2)all damages caused by the temporary move have been or will be repaired at no cost to HUD.

9/943-10

4330.1 REV-5

C.Relocation Changes Requiring HUD Approval. Except in the emergency situations described below, HUD approval is required. Approval is requested by letter, in duplicate, including the following:

1.the FHA/HUD case number;

2.address and legal description of both the present location and the proposed location of the improvements to be moved;

3.a statement, signed by both mortgagor and mortgagee, acknowledging that the movement is at their risk, not HUD's;

NOTE:The mortgagor and mortgages are encouraged to insure or otherwise protect their interests during the move.

4.a statement that:

a.the lien securing the insured mortgage will remain a good and valid first lien during and after the move;

b.the new lot will be added to the lien before the move;
and

c.that the old lot will be released from the security after the move.

NOTE:Any documentation changing the nature of the lien is to be forwarded to HUD after the move has been completed and the appropriate substitute documents have been recorded.

5.a statement indicating:

a.that the new lot is in an area known to be reasonably free from natural hazards; or

b.whether the new lot is located in a flood plain and, if it is in a flood plain, whether:

(1)the community participates in the Federal flood

Insurance Program; and

3-119/94

4330.1 REV-5

(2)the property will be insured against floods.

3-5DECREASE IN MORTGAGE TERM AND INCREASE IN MONTHLY PAYMENT. Often mortgagees wish to offer alternate options of payment to mortgagors to enable the mortgage to be paid-in-full at an earlier date. For example, when a mortgagor prepays a portion of the mortgage and/or agrees to pay an additional amount each month in order to pay the mortgage in full at an earlier maturity date, the mortgagee will, in return, offer a reduced interest rate. To accelerate the maturity of a loan, the monthly mortgage payment may be increased and the mortgage term decreased by mutual agreement of mortgagee and mortgagor. Such a modification may be made if the mortgage is current, the payment history is fully satisfactory, the mortgagee has determined that the higher payment is within the mortgagors, ability to pay, and the following conditions are met.

A.When HUD Approval Is Required. If the monthly mortgage payment is increased over \$100 per month and/or the mortgage is three years old or less, HUD approval is required.

B.Reversion Is Permitted. The modification agreement must contain a clause which will permit reversion to the original mortgage terms if it is determined that such reversion can salvage the account and prevent a foreclosure.

C.Mortgagor Certification. The modification agreement must contain a certification by the mortgagors stating that they are aware of the positive and negative aspects, and have voluntarily agreed to the increased payments.

3-6REDUCTION OF INTEREST RATE. Modifications providing only for a reduction of interest rate (either by amendment or by the creation of new documents), do not require HUD approval. If the amendment or new instruments make any other changes, however, approval may be required as discussed in Paragraph 3-1A.

3-7REFINANCE TRANSACTIONS. (For detailed information refer to HUD Handbook 4155.1 REV-4, Mortgage Credit Analysis for Mortgage Insurance On One-to-Four Family Properties).

9/943-12