
CHAPTER 6. CONSTRUCTION PERIOD

- 6-1. GENERAL. Problems often encountered in construction of Section 236 projects are discussed in this Chapter. The provisions of Reference (18) of the Foreword as modified herein, apply to Section 236 projects as well as to projects constructed under other program.
- 6-2. WORK STOPPAGES. Work on a project may be stopped by weather conditions, labor problems, financial difficulties, and other causes. In addition, some Section 236 projects have been delayed or stopped by opposition by neighborhood organizations or informally organized groups of citizens. If there is litigation, HUD may be made a party in some actions and may have reason to intervene in others. Therefore, it is important that HUD-FHA have timely information on all work stoppages.
- a. Each Mortgagee should be informed that it must advise the Field Office Director immediately upon hearing of a work stoppage.
 - b. The Field Office Director, upon learning that a work stoppage has occurred on any project being financed with insured advances, shall ascertain all the facts concerning the work stoppage and prepare an accurate report for the Regional and Central Offices. In making the investigation, the Field Office Director shall communicate with the mortgagee, the mortgagor and the contractor, to determine the cause of the stoppage and to ascertain when or if resumption of construction is anticipated. It is the responsibility of the Director to impress upon the parties concerned, especially the mortgagee, the seriousness of work stoppage. The mortgagee should be reminded that a stoppage continuing for a period of 20 (calendar) days or more gives it the option to declare a default.
 - c. It is the Responsibility of the Field Office Director to advise the Regional and Central Offices when a work stoppage from any cause has continued for a period of 20 (calendar) days. If it is apparent prior to the expiration of 20 days that efforts to resume construction are likely to be unsuccessful, the Regional and Central Offices should be notified at once.

- d. The Regional and Central Offices are to be notified immediately of any legal action taken for the purpose of stopping construction - whether HUD has been named a party or not. For example, it is imperative that these offices be notified immediately if an injunction is issued by a State Court against a project or a builder after advances have been insured. A timely decision has to be made as to what action HUD will take to protect its financial interest. The Regional and Central Offices should also be notified immediately of any work stoppage resulting from local opposition or pressure.
 - e. Notification to the Regional and Central Offices shall be in the form of a telegram which cites pertinent facts and relevant legal issues, and which suggests action to be taken to protect the Secretary's interest. If Regional or Central Office legal assistance is required, it should be requested in the telegram. The telegram to the Central Office shall be addressed to the Director, Subsidized Housing Programs, with copies to the Regional Administrator and the Regional Counsel.
 - f. Upon Being Notified of the problem, the Regional Counsel shall conduct an investigation in order to furnish the Central Office a timely report on the relevant facts and legal issues. This report will be in the form of a memorandum to the Office of the General Counsel, with a copy to the Director, Subsidized Housing Programs.
- 6-3. EXTENSION OF TIME TO COMPLETE CONSTRUCTION. In cases in which delays in construction are incurred, permission may be requested of the Field Office Director to amend the construction contract by extending the date of completion. No extension of time will be approved unless it can be demonstrated that delay was due to causes beyond the contractor's control. It is intended that when the delay was due to the contractor's fault, or when requests for extension were not filed in a timely fashion, the provisions of Article 2C (liquidated damage clause) of the construction contract will be enforced against the contractor and the surety. Requests for extension must be made to the Field Office Director no more than 20 days after the occurrence of the delay (the time limit set by Paragraph 8. 3. 2 of the AIA General Conditions). When requests have been filed within the time specified and when the Field Office Director is satisfied that the delay was caused solely by circumstances beyond the contractor's control, consent to an extension may be granted by appropriate change order (in accordance with Paragraph 8. 3. 1 of the AIA General Conditions), provided the written consent of the surety is first obtained.

6-4. COMMENCEMENT OF AMORTIZATION. In Section 236 projects (and Section 221(d)(3) projects to be converted to Section 236 at final endorsement), amortization of the mortgage shall commence on the first day of the first month which begins not less than thirty (30) days following final endorsement. In some cases, this may require a deferment in scheduled commencement of amortization. In cases in which there would be more than a sixty (60) day period between final endorsement and commencement of amortization, the mortgage should be amended to provide for commencement of amortization not later than the first day of the first month which begins not less than thirty (30) days after final endorsement.

6-5. DEFERMENT OF COMMENCEMENT OF AMORTIZATION.

- a. When Amortization is Scheduled to Commence Before Final Endorsement, the Field Office Director shall approve a deferment of commencement of amortization from the originally scheduled date to the first day of the first month which begins not less than thirty (30) days following final endorsement. To satisfy mortgage requirements, prior to granting the deferment, the field office must be in receipt of a request from the mortgagor, supported by a letter from the mortgagee concurring in the deferment.
- b. In Every Case in which a Deferment is Necessary, the Field Office Director must give particular attention to the timely completion of construction, the submission and approval of cost certification, and the initial rent-up of the project, so that a final endorsement will occur as quickly as possible. Mortgagors and mortgagees should be reminded that while interest reduction payments commence at the cut-off date for cost certification, the computation is based on the amount of insured advances at cut-off date up to final endorsement, at which time payments are computed on the amount of insured advances at date of final endorsement. The original mortgage term shall be used in computing interest reduction payments for the period from cut-off date for cost certification to final endorsement, and the payments shall not be subject to adjustment if the term of the mortgage cannot be extended to give effect to a deferment of commencement of amortization.
- c. In Most Section 236 Cases, and in those to be converted to Section 236 at final endorsement (see subparagraph e.), a corresponding adjustment in the term of the mortgage will be made by extending the maturity date for a period equivalent to the period of deferment. This will eliminate the necessity

(except in cases where there has been a substantial reduction in the principal indebtedness due to cost certification). In granting the deferment, the letter agreement to the mortgagee will be in the form prescribed in the Appendix 22.

- d. Advance Amortization. In cases where the maturity date of the mortgage is extended, provisions governing advance amortization apply as set forth in Reference (19) of the Foreword, with the following change: In order that the Director may determine whether or not advance amortization is required, the mortgagor must account for all operating income for the period ending three months prior to the ACTUAL date of the first principal payment under the mortgage.
- e. Prior to Execution of a Modification Agreement extending the maturity date, it will be necessary for HUD counsel to be fully satisfied that the priority or validity of the mortgage will not be affected. This will require the recordation of the Modification Agreement and an endorsement to the title policy extending the effective date of the policy through the date of the modification agreement and insuring the mortgage as modified as a valid first lien. If the title company is unable to issue such an endorsement, the maturity date may not be extended. If the maturity date cannot be extended, the letter agreement to the mortgagee granting the deferment will be in the form prescribed in the Appendix 23.
- f. At the Time a Final Endorsement Date is Established, the new payment provisions, based on the reduced mortgage term, and the actual outstanding balance, will be furnished on request to the Multifamily Mortgage Insurance Division, Mortgage Insurance Accounting Branch.
- g. The Field Office Director is authorized to approve such modifications of the mortgage instruments as may be necessary to effect the deferment of principal payments, provided the instruments have been examined and cleared by the closing attorney.
- h. It Should be Noted that in connection with the granting of deferment of commencement of amortization pursuant to the foregoing, the commencement of payment of monies into the reserve fund for replacements is automatically deferred, in accordance with the provisions of the Regulatory Agreement and Mortgagee's Certificate.

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- i. Copies of All Executed Agreements are to be forwarded to the ARA (HPMC), to the Multifamily Mortgage Insurance Division,

Attn: Mortgage Insurance Accounting Branch, and to the Director, Subsidized Housing Programs.

- 6-6. DEFAULTS UNDER THE MORTGAGE. A detailed procedure for treatment of defaults is set out in Reference (13) of the Foreword. This procedure is also applicable and is to be followed in all cases of default occurring during the construction period.
- 6-7. COST CERTIFICATION. It is the responsibility of the Field Office Director to determine the maximum insurable mortgage based on actual cost of the completed project and the amount of the reduction of the original mortgage amount, if any. Complete instructions for review and processing of cost certifications are contained in Reference (19) of the Foreword.
- 6-8. MORTGAGE REDUCTIONS DUE TO COST CERTIFICATION. If the principal indebtedness cited in the mortgage note has been substantially reduced due to cost certification, the reduction (unless a more formal modification is required by the jurisdiction) is to be handled by way of modification agreement with a provision for a new monthly payment to principal and interest in order to amortize the reduced principal amount over the original mortgage term (see sample modification agreement in the Appendix 24). The reduction should not be handled by way of an endorsement on the back of the mortgage note. New payment provisions will be furnished on request by the Multifamily Mortgage Insurance Division, Mortgage Insurance Accounting Branch, Central Office.
- a. Whether or not a mortgage has been "substantially" reduced shall be determined by the parties, based on factors such as the amount of the resultant reductions in basic rentals.
- b. In making the decision, it should be kept in mind that a reduction in the mortgage amount that results in only a small change in the market rate LAMP figure will result in a somewhat larger change in the payment to be paid by the mortgagor. If the change is "substantial," a recomputation of allowable rentals based on the reduced mortgage amount will be necessary.

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- 6-9. AUDIT REPORTS - OFFICE OF AUDIT. Any Central, Regional, or Field Office may request an audit of the books and records of a project mortgagor. In Section 236 cases, the necessity for audits dealing with irregular cost certification, bankruptcy, slow construction, etc., is supplemented by problems surrounding the eligibility of tenants for occupancy in the project. If noncompliance with terms of the Regulatory Agreement is suspected, an audit should be requested and immediate action taken to resolve any adverse

findings.
