

## § 207.256b

Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

[64 FR 4770, Jan. 29, 1999]

### § 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement which extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, it will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

### § 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being appraised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

### § 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it must, within 45 days thereafter, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the

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mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner. The following requirements shall also be met by the mortgagee:

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

(2) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other