DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252, and 255

[Docket No. FR–3813–I–01]

RIN 2502–AG50

Conversion From Coinsurance to Full Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: HUD is amending its multifamily coinsurance regulations to provide coinsuring lenders with two new options in dealing with defaulted coinsured mortgages. Specifically, this interim rule permits coinsuring lender-issuers to request that HUD endorse certain defaulted mortgages for full insurance, without a GNMA takeover of the lender-issuer's entire portfolio. Additionally, this interim rule allows coinsuring lenders to advance funds to cure mortgage delinquencies on a coinsured mortgage and to reduce principal on that mortgage to a level that restores the financial viability of the project.

DATES: Effective date: October 19, 1995.

Sunset Provision: Sections 251.3, 251.4, 251.5, 252.3, 252.4, 252.5, 255.3, 255.4, and 255.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

Comments due date: November 20, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gwen Chandler, Acting Deputy Director, Coinsurance Management Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 6176, telephone (202) 401–3272. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594 or 1–800–877–8339 (Federal Information Relay Service TDD). (Other than the ''800'' number, these telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION:

I. Background

On October 10, 1990 (55 FR 41312), a final rule was published terminating the authority of the FHA Commissioner to insure mortgage loans under the FHA multifamily coinsurance programs and revising 24 CFR parts 251, 252 and 255. As a result of that final rule, parts 251, 252 and 255 were each reduced to a single section dealing with the program phase-out process. A subsequent rulemaking added an additional section to each part revising the requirements concerning the Government National Mortgage Association's (GNMA) right to assignment. (See 55 FR 41319, October 10, 1990.) While they are no longer included in the Code of Federal Regulations, those regulations in effect before November 12, 1990 continue to govern the rights and obligations of mortgagors, coinsuring lenders and HUD under contracts of coinsurance entered into before the termination of the coinsurance programs.

HUD is making two changes in the coinsurance regulations in 24 CFR parts 251, 252, and 255. These amendments are designed to reduce Government costs and to benefit coinsuring lenders by minimizing their risk of default under a GNMA guaranty agreement and encouraging the continued viability of housing financed with coinsured mortgages. These amendments are intended to apply to existing coinsured mortgages which are in default. Under 24 CFR 251.4, 252.4, and 255.4 (1990 and earlier), the FHA Commissioner may amend the regulations that constitute the contract of coinsurance, but the amendments may not adversely affect a lender under an existing contract of coinsurance. HUD believes that these amendments are mutually beneficial to HUD and the lenders. The amendments provide additional options for dealing with defaulted coinsured mortgages. Their use is at the option of the coinsuring lender, subject to HUD approval.

The first change (see §§ 251.3, 252.3, and 255.3) affects only coinsured mortgages that back securities guaranteed by GNMA. It permits a coinsuring lender, for mortgages meeting the rule's requirements, to request that HUD endorse the mortgage for full insurance. Under current regulations, the option to have a mortgage endorsed for full insurance is available only to GNMA after it has taken over all loans in a coinsuring lender-issuer's portfolio following the lender-issuer's default under the GNMA guaranty agreement. After GNMA has taken over such a portfolio, it may have all of the coinsured mortgages in the portfolio endorsed for full insurance. This interim rule permits a coinsuring lender-issuer to request that certain seriously defaulted coinsured mortgages be converted to full insurance, thereby minimizing the risk of a lender-issuer's default under the GNMA guaranty agreement and of a GNMA takeover of the lender-issuer's entire portfolio. HUD will impose a fee on the coinsuring lender that is intended to have the lender share an equitable portion of the cost of the mortgage loan default.

The second amendment (see §§ 251.4, 251.5, 252.4, 252.5, 255.4, and 255.5) would apply to all coinsuring lenders. It is intended to give coinsuring lenders additional flexibility in dealing with less serious defaults by providing a partial payment of claim mechanism that would enable the mortgagor and the lender to recast the coinsured mortgage so that it becomes a viable performing coinsured mortgage. The partial payment of claim procedure also benefits the government as it results in a current reinstated first mortgage, and prevents a full claim being made on the insurance fund. This option is modelled after the partial payment of claim procedure in HUD's Housing Finance Agency Risk-Sharing Program. (See 24 CFR part 266, in particular § 266.630.)

Under the partial payment of claim procedure, a coinsuring lender that meets the regulatory requirements and that receives HUD approval could cure the first mortgage interest delinquency on the coinsured mortgage and could reduce principal on that mortgage to a level that restores the financial viability of the project by accepting a note in that amount. The coinsuring lender must secure this note with a mortgage that is subordinate to the coinsured mortgage. HUD will make a partial payment of claim in an amount equal to 80 percent of the above amount. The lender must remit to HUD 80 percent of all amounts collected on the lender's junior mortgage.

The junior mortgage is a second note and is similar to a surplus cash note. Surplus cash constitutes any amount of cash remaining on a monthly basis after payment of debt service on the first note, operating expenses, deferred

maintenance and any other reasonable expenses required to be paid under the insured mortgage. Since the mortgage is considered to be soft and similar to a surplus cash note, HUD expects to be repaid from net cash produced by the project. However, if for any reason a project is unable to produce surplus cash (i.e. a downturn in the market), neither HUD, nor the lender, nor the owner will receive disbursements from the project. There is no commitment between HUD and the lender for repayment on the junior mortgage.

Where the mortgage that is a candidate for the partial payment procedure is backing a GNMA guaranteed mortgage-backed security, the mortgagee should understand clearly that, while GNMA does not object to a partial payment arrangement, GNMA procedures require (1) that the full amount of the partial claim payment be passed through to security holders and (2) that subsequent monthly payments to security holders must include: (a) The scheduled principal due on the mortgage based on the fixed monthly payment specified in the loan prior to any modification resulting from the partial payment of claim arrangement and (b) interest at the security rate on the unpaid pool principal balance. Mortgagees who agree to a recasting of the mortgage which reduces the mortgagor's monthly payment must therefore, make up, from the mortgagee's own funds, the difference between the amount paid by the mortgagor and the amount due to the security holders, until the security holders have received all principal and interest due under the terms of the security. Alternatively, simultaneous with the partial payment of claim transaction for a loan more than 90 days in default, the existing pool may be terminated and a new GNMA security issued and marketed in the amount of the reduced first mortgage.

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1). HUD finds that in this case prior comment is contrary to the public interest, since immediate implementation of this interim rule will benefit the public. Specifically, this interim rule allows coinsuring lender-issuers to minimize their risk of default under a GNMA guaranty agreement by requesting the conversion of certain mortgages to full insurance. This interim rule also permits coinsuring lenders to restore the financial viability of projects by advancing funds to cure mortgage delinquencies. Although HUD believes issuing this interim rule for immediate effect will benefit the public, HUD welcomes public comment. All comments will be considered in the development of the final rule.

HUD has adopted a policy of setting an expiration date for an interim rule unless a final rule is published before that date. These ''sunset'' provisions appear in §§ 251.3(c), 251.4(e), 251.5(b), 252.3(c), 252.4(e), 252.5(b), 255.3(c), 255.4(e), and 255.5(b), and provide that the amendments made to 24 CFR parts 251, 252, and 255 by this interim rule will expire on a date 18 months from their effective date.

III. Regulatory Reinvention

Consistent with Executive Order 12866, and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing all its regulations to determine whether certain regulations can be eliminated, streamlined or consolidated with other regulations. As part of this review, this interim rule, at the final rule stage, may undergo revisions in accordance with the President's regulatory reform initiatives. In addition to comments on the substance of these regulations, the Department welcomes comments on how this interim rule may be made more understandable and less burdensome.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this interim rule are directed toward participants in the FHA multifamily coinsurance program. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with this program.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The interim rule merely amends the regulations governing HUD's multifamily coinsurance program. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the interim rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities.

E. Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 251, 252, and 255 are amended as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

2. Sections 251.3, 251.4 and 251.5 are added to read as follows:

§ 251.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent under applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included under applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fee established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 221, except that any payment will be made in cash instead of debentures.

(c) Section 251.3 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 251.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or appplicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th of the month must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage

remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 251.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 251.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage insurance premium.

(b) Section 251.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

3. The authority citation for 24 CFR part 252 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

4. Sections 252.3, 252.4 and 252.5 are added to read as follows:

§ 252.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent with applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included under applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fees established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 221, except that any payment will be made in cash instead of debentures.

(c) Section 252.1 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 252.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or applicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned

by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 252.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 252.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage insurance premium.

(b) Section 252.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for 24 CFR part 255 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

6. Sections 255.3, 255.4 and 255.5 are added to read as follows:

§ 255.3 Case-by-case conversion to full insurance.

(a) Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance effective as of date of such endorsement, if the Commissioner is satisfied that:

(1) The Mortgage backs securities guaranteed by GNMA;

(2) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(3) The lender has made reasonable efforts to work out any Mortgage default consistent with applicable regulations in effect prior to November 12, 1990, but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(4) The conversion would be less costly to the Department than if the Mortgage remained coinsured; and

(5) The lender agrees to pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance.

(i) Lenders submitting a claim for the full insured mortgage amount following the Commissioner's endorsement of the mortgage will pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the mortgage. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(ii) Lenders submitting a claim for partial payment following the Commissioner's endorsement of the Mortgage will pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. This fee is in addition to the one set forth in paragraph (a)(5) of this section.

(iii) HUD will credit all advances made by the lender on the project's behalf against the fees set forth in paragraphs (a)(5) (i) and (ii) of this section. For the purposes of this section, advances made on the project's behalf are defined as those amounts included in applicable regulations in effect prior to November 12, 1990. However, the credit for legal fees may not exceed 30 percent of the total credit which the lender will offset against the fees established in paragraphs (a)(5) (i) and (ii) of this section.

(b) After endorsement of the Mortgage by the Commissioner, any future insurance claim or any assignment of the fully insured Mortgage shall be governed by 24 CFR part 207, except that any payment will be made in cash instead of debentures.

(c) Section 255.3 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 255.4 Partial payment of claim.

(a) *General.* As an alternative to filing a notice of election to acquire the property under applicable regulations in effect prior to November 12, 1990 or applicable earlier provision, a lender may file a claim for partial payment. Upon receipt of such a claim, the Commissioner may make a partial payment of claim in accordance with the requirements of this section.

(b) *Lender submission.* The lender must provide the following information with its application for a partial claim payment:

(1) The amount by which the lender will reduce the principal on the coinsured Mortgage and the amount of delinquent interest on the coinsured Mortgage that the lender will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured Mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment, when considered with other resources available to the project, is sufficient to restore the financial viability of the project;

(iii) The project is or can be made (at reasonable cost) structurally sound;

(iv) The management of the property is satisfactory; and

(v) The default under the coinsured Mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the lender's submission satisfies the requirements of paragraph (b) of this section and is acceptable to the Commissioner, the Commissioner shall notify the lender to proceed to closing on its junior mortgage authorized by paragraph (d)(3) of this section. When the junior mortgage is closed, the lender shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the lender, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the lender of the information needed to make the application acceptable or shall advise the lender that by a date

specified it must institute action to foreclose the Mortgage or acquire title to the Mortgaged property through deed-in-lieu of foreclosure.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made on a mortgage coinsured under this part.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to 80 percent of the amount of relief provided by the lender in the form of a reduction in principal and a deferral of delinquent interest on the coinsured Mortgage.

(3) *Lender junior mortgage.* Repayment of the relief provided by the lender must be secured by a mortgage to the lender, junior to the remaining coinsured Mortgage. This junior mortgage may provide for postponed amortization and may not be assigned by the lender. This junior mortgage is not coinsured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by owner to HUD.* The owner must remit to HUD 80 percent of all amounts due under the junior mortgage. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate in effect as of the date of the firm commitment or initial endorsement of the coinsured mortgage, whichever rate is higher.

(5) *Partial claim repayment by owner to lender.* The owner must remit all amounts due for repayment of the relief provided by the lender's junior mortgage to the lender.

(6) *Certified statements of amounts collected.* As long as the junior mortgage remains of record, the lender must submit to the Commissioner a quarterly certified statement of the amounts collected by the lender. The lender must submit a final certified statement within 30 days after the junior mortgage is paid in full, foreclosed, or otherwise terminated.

(e) Section 255.4 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

§ 255.5 Mortgage insurance premiums after a partial claim payment.

(a) After a partial claim payment is made, mortgage insurance premiums shall continue to be calculated as if there had been no partial claim payment. HUD will bill the lender on the .05 percent portion of the mortgage coinsurance premium.

(b) Section 255.5 shall expire and shall not be in effect after April 21, 1997, unless prior to April 21, 1997, the Department publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

Dated: May 31, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–22826 Filed 9–18–95; 8:45 am]

BILLING CODE 4210–27–P