

## **CODE OF FEDERAL REGULATIONS**

### **TITLE 24**

#### **SECTION 200**

##### **§ 200.53 Initial operating funds.**

The mortgagor shall deposit cash with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, in accordance with terms, conditions and standards established by the Commissioner for:

- (a) Accruals for taxes, ground rates, mortgage insurance premiums, and property insurance premiums, during the course of construction;
- (b) Meeting the cost of equipping and renting the project subsequent to its completion in whole or part; and
- (c) Allocation by the mortgagee for assessments required by the terms of the mortgage in an amount acceptable to the Commissioner.

#### **SECTION 221**

##### **Subpart C—Eligibility Requirements—Moderate Income Projects**

###### **§ 221.501 Eligibility requirements.**

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 221 of the National Housing Act (12 U.S.C. 1715), as amended.

[61 FR 14405, Apr. 1, 1996]

##### **Subpart D—Contract Rights and Obligations—Moderate Income Projects**

###### **§ 221.751 Cross-reference.**

(a) All of the provisions of subpart B, part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 221 of the National Housing Act, except the following provisions:

Sec.

207.252 First, second, and third premium.

207.252a Premiums—operating loss loans.

207.259 Insurance benefits.

(b) For the purposes of this subpart, all references in part 207 of this chapter to section 207 of the act shall be construed to refer to section 221 of the Act, and all references to part 207 shall be construed to refer to this subpart.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972; 42 FR 59675, Nov. 18, 1977]

###### **§ 221.753 Termination of mortgage insurance.**

In addition to the provisions of §207.253a, the following requirements apply to certain multifamily mortgages insured under section 221 of the National Housing Act:

(a) For those projects qualifying as eligible low income housing under §248.201, the contract of insurance may be terminated only as provided in part 248.

(b) For those projects subject to section 250(a) of the National Housing Act, the contract of insurance may be terminated only if the Commissioner determines that the requirements of section 250(a) are met.

[55 FR 38958, Sept. 21, 1990]

### **§ 221.755 Premiums first, second, third and operating loss loans.**

All of the provisions of §§207.252 and 207.252a of this chapter, relating to mortgage insurance premiums, apply to mortgages insured under this subpart that provide for interest at the market rate prescribed in §221.518(a) except that as to mortgages insured under this subpart pursuant to section 238(c) of the Act all mortgage insurance premiums due in accordance with §§207.252 and 207.252a shall be calculated on the basis of one percent. The provisions of §207.252. shall not apply to:

(a) Mortgages that provide for interest during the construction period at the market rate and for interest subsequent to final endorsement at the below market rate prescribed in §221.518(b); or

(b) Mortgages encumbering a project in which all units are covered by an annual contributions contract issued pursuant to section 10(c) of the Housing Act of 1937.

[36 FR 24587, Dec. 22, 1971, as amended at 42 FR 59675, Nov. 18, 1977]

### **§ 221.761 Forbearance relief.**

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of regular mortgage payments for a specified period of time, if the following requirements are met:

(1) The mortgage was endorsed for insurance on or after July 7, 1961.

(2) The Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time and evidences such determination by written approval of the forbearance agreement.

(b) The time specified in §207.258(a) of this chapter, within which a mortgagee shall give the Commissioner written notice of its intention to file an insurance claim, shall be suspended for the period of time specified in the forbearance agreement as long as the mortgagor complies with the requirements of such agreement.

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its decision to either assign the mortgage to the Commissioner or to acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in §221.763 shall be applicable.

[36 FR 24587, Dec. 22, 1971, as amended at 51 FR 27838, Aug. 4, 1986]

### **§ 221.762 Payment of insurance benefits.**

All of the provisions of §207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except as provided in this section:

(a) *Method of payment.* All of the insurance benefits provided by §207.259 (b) or (c) of this chapter shall be paid in cash unless the mortgagee files with the application a written request for payment in debentures. If such a request is made, payment will be made in debentures with a cash payment to adjust any difference between the total amount of the insurance settlement and the amount of the debentures issued.

(b) *Below market interest rate mortgages.* Where the mortgage has been finally endorsed and the special below market interest rate provided in §221.518(b) is applicable as of the date of default, the 1 percent deduction from insurance benefits prescribed in §207.259(b)(2)(iv) of this chapter shall not be applicable.

(c) *Mortgages financed with section 11(b) obligations.* Where the funds for a mortgage loan are provided by obligations that are tax-exempt under section 11(b) of the United States Housing Act of 1937 (24 CFR part 811), the one percent deduction from insurance benefits prescribed in §207.259(b)(2)(iv) of this chapter shall not be applicable to claims with respect to multifamily rental housing projects for which a firm commitment for mortgage insurance was issued on or after March 12, 1979.

[36 FR 24587, Dec. 22, 1971, as amended at 44 FR 40890, July 13, 1979]

### **§ 221.763 Special insurance benefits—forbearance relief cases.**

(a) In the case of a mortgage that provides for payment of interest at the market rate prescribed in §221.518(a), if the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance agreement, the mortgagee shall be entitled to obtain a special insurance payment in cash, in lieu of the insurance benefits otherwise provided under this subpart. To receive the special insurance payment, the mortgagee shall assign the mortgage to the Commissioner in compliance with the requirements of §207.258(b) of this chapter.

(b) The special insurance benefit to the mortgagee shall be a cash payment computed in accordance with §207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in §207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, there shall be included in the cash payment an amount equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the payment is made; except that when the mortgagee fails to meet any of the applicable requirements of §207.258(b) of this chapter and §221.761(c) within the specified times and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such debenture interest allowance shall be computed only to the date on which the particular required action should have been taken.

### **§ 221.770 Assignment option.**

A mortgagee holding a conditional or firm commitment issued on or before November 30, 1983 (or, in the Direct Endorsement program, a property appraisal report signed by the mortgagee's approved underwriter on or before November 30, 1983) has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided that the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to receive insurance benefits in accordance with §221.780.

[49 FR 12698, Mar. 30, 1984, as amended at 57 FR 58351, Dec. 9, 1992]

### **§ 221.775 Option period.**

The mortgagee may exercise its option to assign within one year following the twentieth anniversary of the date the mortgage was finally endorsed for insurance.

### **§ 221.780 Issuance of debentures.**

Upon the exercise of the assignment option and the satisfactory performance of the requirements as to assignment set out in §207.258 of this chapter, the Commissioner shall issue the assignor mortgagee debentures having a total par value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

[59 FR 49816, Sept. 30, 1994]

### **§ 221.785 Date of maturity of debentures.**

The debentures issued pursuant to the exercise of an assignment option shall be dated as of the date the mortgage is assigned to the Commissioner and shall mature 10 years after such date.

### **§ 221.790 Debenture interest rate.**

The debentures issued pursuant to the exercise of an assignment option shall bear interest at the *going Federal rate* at date of issuance. The *going Federal rate* means the annual rate of interest specified by the Secretary of the Treasury as applicable to the 6-month period which includes the issuance date of the debentures. The Secretary of the Treasury shall determine this applicable rate by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such 6-month period, on all outstanding marketable obligations of the United States having a maturity date of 8 to 12 years from the first day of May or November, as the case may be. If there should be no outstanding marketable obligations of the United States having the 8 to 12 year maturity at the time the Secretary of the Treasury is required to determine the debenture rate involved, the obligation next shorter than 8 years and the obligation next longer than 12 years respectively shall be used.

### **§ 221.795 Displacement—below market interest rate mortgages.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his or her rights

under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Owner. A person who is dissatisfied with the Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that the Owner will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The Owner shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a “displaced person” (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

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