

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER II--OFFICE OF ASSISTANT SECRETARY FOR HOUSING--FEDERAL  
HOUSING COMMISSIONER,  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 200--INTRODUCTION TO FHA PROGRAMS

Subpart A--Requirements for Application, Commitment, and Endorsement Generally  
Applicable to Multifamily and Health Care Facility Mortgage Insurance Programs; and  
Continuing Eligibility Requirements for Existing Projects

Requirements Incident to Insured Advances

Sec. 200.50 - Building loan agreement.

The mortgagor and mortgagee must execute a building loan agreement approved by the Commissioner, that sets forth the terms and conditions under which progress payments may be advanced during construction, before initial endorsement of the mortgage for insurance.

Sec. 200.52 - Construction contract.

The form of contract between the mortgagor and builder shall be as prescribed by the Commissioner in accordance with terms and conditions established by the Commissioner.

General Requirements

Sec. 200.60 - Assurance of completion for offsite facilities.

An assurance of completion for offsite utilities, streets, and other facilities required for a buildable site shall be provided in an amount and form acceptable to the Commissioner, except where a municipality or other public body has, in a manner acceptable to the Commissioner, agreed to install such improvements without cost to the mortgagor.

Sec. 200.63 - Required deposits and letters of credit.

- (a) Deposits. Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.
- (b) Letter of credit. Where the use of a letter of credit is acceptable to the Commissioner in lieu of a deposit of cash or securities, the letter of credit

shall be issued to the mortgagee by a banking institution and shall be unconditional and irrevocable:

- (1) The mortgagee of record may not be the issuer of any letter of credit without the prior written consent of the Commissioner.
- (2) The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment there under is not immediately met, the mortgagee shall immediately provide a cash deposit equivalent to the un-drawn balance of the letter of credit.

#### Cost Certification

##### 200.95 - Certification of cost requirements.

- (a) Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:
  - (1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.
  - (2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.
  - (3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.
- (b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

##### 200.96 - Certificates of actual cost.

- (a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing project that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders,

partners or other entity member ownership, of construction and other costs, as prescribed by the Commissioner.

- (b) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.
- (c) Upon the Commissioner's approval of the mortgagor's certification of actual cost such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor