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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--Table of Contents

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

Source: 61 FR 14399, Apr. 1, 1996, unless otherwise noted.

Sec. 200.3 Definitions.

(a) The definitions ``Department'', ``Elderly person'', ``HUD'', and
``Secretary'', as used in this subpart A shall have the meanings given
these definitions in 24 CFR part 5.

(b) The terms ``first mortgage'', ``hospital'', ``maturity date'',
``mortgage'', ``mortgagee'', and ``state'', as used in this subpart A
shall have the meaning given in the section of the National Housing Act
(12 U.S.C. 1701), as amended, under which the project mortgage is
insured.

(c) As used in this subpart A:

Act means the National Housing Act, (12 U.S.C. 1701) as amended.

Commissioner means the Federal Housing Commissioner.

FHA means the Federal Housing Administration.

Insured mortgage means a mortgage which has been insured by the
endorsement of the credit instrument by the Commissioner, or the
Commissioner's duly authorized representative.

Project means a property consisting of site, improvements and, where
permitted, equipment meeting the provisions of the applicable section of
the Act, other applicable statutes and regulations, and terms,
conditions and standards established by the Commissioner.

Eligible Mortgagor

Sec. 200.5 Eligible mortgagor.

The mortgagor shall be a natural person or entity acceptable to the
Commissioner, as limited by the applicable section of the Act, and shall
possess the powers necessary and incidental to operating the project.

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Sec. 200.6 Employer identification and social security numbers.

The requirements set forth in 24 CFR part 5, regarding the
disclosure and verification of social security numbers and employer
identification numbers by applicants and participants in assisted
mortgage and loan insurance and related programs, apply to these
programs.

Eligible Mortgagee

Sec. 200.10 Lender requirements.

The requirements set forth in part 202 of this chapter regarding approval, recertification, withdrawal of approval, approval for servicing, report requirements and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, and governmental and similar institutions, apply to these programs.

[62 FR 20081, Apr. 24, 1997]

Sec. 200.11 Audit requirements for State and local governments as mortgagees.

Requirements set forth in 24 CFR part 44, Non-Federal Governmental Audit Requirements, apply to State and local governments (as defined in 24 CFR part 44) that receive mortgage insurance as mortgagees.

Eligible Mortgage

Sec. 200.15 Maximum mortgage.

Mortgages must not exceed either the statutory dollar amount or loan ratio limitations established by the section of the Act under which the mortgage is insured, except that the Commissioner may increase the dollar amount limitations:

(a) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require; and

(b) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

Sec. 200.16 Project mortgage adjustments and reductions.

The principal amount computed in accordance with the applicable section of the Act for the insured mortgage shall be subject to additional adjustments and reductions in accordance with terms and conditions established by the Commissioner.

Sec. 200.17 Mortgage coverage.

The mortgage shall cover the entire property included in the project.

Sec. 200.18 Minimum loan prohibition.

A mortgagee may not require that the mortgage exceed a minimum amount established by the mortgagee, as a condition of providing a loan secured by a mortgage insured under this part.

Miscellaneous Project Mortgage Insurance

Sec. 200.20 Refinancing insured mortgages.

An existing insured mortgage may be refinanced pursuant to provisions of section 223(a)(7) of the Act and such terms and conditions established by the Commissioner.

Sec. 200.21 Reinsurance of Commissioner held mortgages.

Any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired under any section or title of the Act, may be insured pursuant to provisions of section 223(c) of the Act and such terms and conditions established by the Commissioner.

Sec. 200.22 Operating loss loans.

An insured loan to cover the operating losses of a project with an existing Commissioner insured mortgage may be made in accordance with provisions of section 223(d) of the Act and such terms and conditions established by the Commissioner.

Sec. 200.23 Projects in declining neighborhoods.

A Mortgage financing the repair, rehabilitation or construction of a project located in an older declining urban area shall be eligible for insurance pursuant to provisions of section 223(e) of the Act and such terms and conditions established by the Commissioner.

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Sec. 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility or board and care home, or any combination thereof, under section 232 of the Act, or hospital under section 242 of the Act may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by the Commissioner.

Sec. 200.25 Supplemental loans.

A loan, advance of credit or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to a project covered by a mortgage insured under any section of the Act or Commissioner held mortgage, or equipment for a nursing home, intermediate care facility, board and care home, assisted living facility, hospital or group practices facility, may be insured pursuant to the provisions of section 241 of the Act and such terms and conditions established by the Commissioner.

Miscellaneous Cross Cutting Regulations

Sec. 200.30 Nondiscrimination and equal opportunity.

The requirements set forth in 24 CFR part 5, and subparts I, J, and M of this part pertaining to nondiscrimination and equal opportunity, apply to these programs.

Sec. 200.31 Debarment and suspension.

The requirements set forth in 24 CFR part 24, except subpart F, apply to these programs.

Sec. 200.32 Participation and compliance requirements.

The requirements set forth in 24 CFR part 200, subpart H, apply to these programs.

Sec. 200.33 Labor standards

(a) The requirements set forth in 29 CFR parts 1, 3 and 5 for compliance with labor standards laws apply to projects under these programs to the extent that labor standards apply as provided in section 212 of the Act, provided that:

- (1) The labor standards provisions do not apply to projects insured under sections 207 or 232 pursuant to section 223(f) of the Act; and
- (2) Supplemental loans under section 241 of the Act are subject to

the provisions of section 212 applicable to the section or title pursuant to which the mortgage covering the project is insured or pursuant to which the original mortgage was insured.

(b) The requirements set forth in 24 CFR part 70 apply to those programs with respect to which there is a statutory provision allowing HUD waiver of Davis-Bacon prevailing wage rates for volunteers.

(c) Project commitments, contracts and agreements, as determined by the Commissioner, and construction contracts and subcontracts, shall include terms, conditions and standards for compliance with applicable requirements set forth in 29 CFR parts 1, 3 and 5 and section 212 of the Act.

(d) No advance under a loan or mortgage that is subject to the requirements of section 212 shall be eligible for insurance unless there is filed with the application for the advance a certificate as required by the Commissioner certifying that the laborers and mechanics employed in construction of the project have been paid not less than the wage rates required under section 212.

Sec. 200.34 Property and mortgage assessment.

The requirements set forth in 24 CFR part 200, subpart E, regarding the mortgagor's responsibility for making those investigations, analysis and inspections it deems necessary for protecting its interests in the property apply to these programs.

Sec. 200.35 Appraisal standards--nondiscrimination requirements.

(a) Nondiscrimination in the selection of appraiser. In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age, or disability.

(b) Nondiscrimination in appraisal determination. The certification required

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by the Uniform Standards of Professional Appraisal Practice must include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

Sec. 200.36 Financial reporting requirements.

The mortgagor must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

[63 FR 46592, Sept. 1, 1998]

Sec. 200.37 Preventing crime in federally assisted housing.

See part 5, subparts I and J of this title, for provisions concerning preventing crime in federally assisted housing, including programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act.

[66 FR 28797, May 24, 2001]

Fees and Charges

Sec. 200.40 HUD fees.

The following fees apply to mortgages to be insured under this part.

(a) Application fee--SAMA letter (for new construction). An application fee of \$1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of \$1 per thousand dollars of the requested mortgage amount shall be

charged for the review of plans and specifications.

(b) Application fee--feasibility letter (for substantial rehabilitation). An application fee of \$3 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) Application fee--conditional commitment. For a mortgage being insured under section 223(f) of the Act (12 U.S.C. 1715n), an application-commitment fee of \$3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment. For a mortgage being insured under section 242 of the Act (12 U.S.C. 1715z-7), an application fee of \$1.50 per thousand dollars of the amount loaned shall be paid to the Commissioner at the time the hospital proposal is submitted to the Secretary of Health and Human Services for approval.

(d) Application fee--firm commitment: General. (1) Except as provided in paragraph (d)(2) of this section, an application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate \$5 per thousand dollars of the requested mortgage amount to be insured. The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted pursuant to the Atomic Energy Community Act of 1955 (42 U.S.C. 2301 et seq.).

(2) Application fee--firm commitment: Hospitals. A firm-commitment fee which, when added to the application fee, shall aggregate \$3 per thousand dollars of the amount of the loan set forth in the firm commitment shall be paid within 30 days after the date of the commitment. If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of the commitment, the commitment shall expire on the 30th day.

(e) Inspection fee--(1) In general. The firm commitment may provide for the payment of an inspection fee in an amount not to exceed \$5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(i) If the case involves insurance of advances, at the time of initial endorsement; or

(ii) If the case involves insurance upon completion, before the date construction is begun.

(2) Existing projects. For a mortgage being insured under section 223(f) of the Act, if the application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost

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of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(f) Fees on increases--(1) In general. Paragraph (f)(1) of this section applies to all applications except applications involving hospitals.

(i) Increase in firm commitment before endorsement. An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate \$5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is

involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(ii) Increase in mortgage between initial and final endorsement. Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate \$5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the \$5 per thousand dollars of the amount of the increase requested.

(iii) Loan to cover operating losses. In connection with a loan to cover operating losses (see Sec. 200.22), a combined application and commitment fee of \$5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(2) Hospitals. Paragraph (f)(2) of this section applies to applications in connection with a mortgage to be insured under section 242 of the Act.

(i) Increase in commitment prior to endorsement. Upon an application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding commitment, an additional application fee of \$1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate \$3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment for the increased amount will expire and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed \$5 per thousand dollars of the amount of increase in commitment. Where insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. Where insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or within 30 days after the date of the issuance of the amended commitment, if construction has begun.

(ii) Increase in mortgage between initial and final endorsement. Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of \$1.50 per thousand dollars computed

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on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate \$3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed \$5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

(g) Reopening of expired commitments. An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening

request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) Transfer fee. Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) Refund of fees. If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) Fees not required. The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

[61 FR 14414, Apr. 1, 1996]

Sec. 200.41 Maximum mortgagee fees and charges.

(a) Mortgagee fees and charges included in the mortgage must be for actual required services provided to the mortgagor by the mortgagee, and shall not exceed common market rates for such services as determined by the Commissioner.

(b) Mortgagee charges for prepayment of the mortgage and late mortgage payments shall not exceed that determined appropriate by the Commissioner.

Commitment Applications

Sec. 200.45 Processing of applications.

(a) Preapplication conference. Except for mortgages insured under section 241(f) or 242 of the Act, the local HUD Office will determine whether participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. The project sponsor may elect (after the preapplication conference if required) to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter may be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the

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project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD Office on HUD-approved forms. No application

will be considered unless accompanied by all exhibits required by the form and program handbooks. At the option of the local HUD Office, the SAMA/Feasibility letter stage of processing can be combined with the firm commitment stage of processing.

(b) Firm commitment requirement. An application for a firm commitment must be made by an approved mortgagee for any project for which a mortgagor seeks mortgage insurance under the Act.

(c) Staged applications. Staged applications leading to an application for firm commitment shall be made as determined appropriate by the Commissioner, and in accordance with such terms and conditions established by the Commissioner. The intermediate stages to firm commitment may include a site appraisal and market analysis (SAMA) letter stage or a feasibility letter stage and a conditional commitment. The conditional commitment stage applies only to mortgages to be insured pursuant to section 223(f) of the Act.

(d) Effect of SAMA letter, feasibility letter, and firm commitment--
(1) SAMA letter. (i) The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter:

(A) The land value fully improved (with off-site improvements installed);

(B) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units; and

(C) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

(ii) After receiving a SAMA letter, the sponsor shall submit design drawings and specifications in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on design development and the drawings and specifications. The comments will be provided to the sponsor for use in preparing a firm commitment application.

(2) Feasibility letter. The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the specific unit rents, the vacancy allowance, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) Conditional commitment. The issuance of a Section 223(f) conditional commitment indicates completion of technical processing involving the estimated value of the property, the detailed estimates of rents, operating expenses and taxes and an estimated mortgage amount.

(e) Term of SAMA letter, feasibility letter, and conditional commitment. A SAMA letter, a feasibility letter, and a

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conditional commitment shall be effective for whatever term is specified in the respective letter or commitment.

(f) Rejection of an application. A significant deviation in an application from the Commissioner's terms or conditions in an earlier stage application commitment or agreement shall be grounds for rejection. The fees paid to such date shall be considered as having been earned notwithstanding such rejection.

(Approved by the Office of Management and Budget under control number 2502-0029)

[61 FR 14415, Apr. 1, 1996]

Sec. 200.46 Commitment issuance.

Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured. The commitment term and any extension or reopening of an expired commitment shall be in accordance with standards established by the Commissioner.

Sec. 200.47 Firm commitments.

A valid firm commitment must be in effect at the time the mortgage instrument is endorsed.

(a) Insurance upon completion. The commitment shall provide the terms and conditions for the insurance of the mortgage:

(1) After completion of construction or substantial rehabilitation of the project; or

(2) Upon completion of required work, except as deferred by the Commissioner in accordance with terms, conditions and standards established by the Commissioner, for an existing project without substantial rehabilitation.

(b) Insured advances. The commitment shall provide for insurance of the mortgage as provided in paragraph (a) of this section, and for the insurance of mortgage money advanced in accordance with terms and conditions established by the Commissioner during: construction; substantial rehabilitation; or other work acceptable to the Commissioner.

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. 200.51 Mortgagee certificate.

The mortgagee shall certify to the Commissioner that it will conform with terms and conditions established by the Commissioner for the mortgagee's control of project funds, and other incidental requirements established by the Commissioner.

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.

Sec. 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.

Sec. 200.54 Project completion funding.

The mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the

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construction of the project. The Commissioner may accept a lesser cash deposit or an alternative to a cash deposit in accordance with terms and conditions established by the Commissioner, where the required funding is to be provided by a grant or loan from a Federal, State, or local government agency or instrumentality.

- (a) An agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under requirements of this section must be disbursed in full for project work, material and incidental charges and expenses before disbursement of any mortgage proceeds, except;
- (b) Funds provided by a grant or loan from a Federal, State or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions and standards established by the Commissioner.

Sec. 200.55 Financing fees and charges.

Fees and charges approved by the Commissioner in excess of the initial service charge shall be deposited with the mortgagee in cash before initial endorsement, except as otherwise preapproved by the Commissioner.

Sec. 200.56 Assurance of completion for on-site improvements.

The mortgagor shall furnish assurance of completion of the project in the form and amount provided by terms, conditions and standards 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. 200.61 Title.

(a) Marketable title to the project must be vested in the mortgagor as of the date the mortgage is filed for record.

(b) Title evidence for the Commissioner's examination shall include a lender's title insurance policy, which title policy provides survey coverage based on a survey acceptable to the title company and the Commissioner; or as the Commissioner may otherwise require, in accordance with terms, conditions and standards established by the Commissioner.

(c) Endorsement of the credit instrument for insurance shall evidence the acceptability of title evidence.

Sec. 200.62 Certifications.

Any agreement, undertaking, statement or certification required by the Commissioner shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

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 thereunder is not immediately met, the mortgagee shall immediately provide a

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cash deposit equivalent to the undrawn balance of the letter of credit.

Property Requirements

Sec. 200.70 Location and fee interest.

The property must be held by an eligible mortgagor, and must conform with requirements pertaining to property location and fee or lease interests of the section of the Act under which the mortgage is insured.

Sec. 200.71 Liens.

The project must be free and clear of all liens other than the insured mortgage, except that the property may be subject to an inferior lien as provided by terms and conditions established by the Commissioner for an inferior lien:

(a) Made or held by a Federal, State or local government instrumentality;

(b) Required in connection with: an operating loss loan insured pursuant to a section 223(d) of the Act; a supplemental loan insured pursuant to section 241 of the Act; or a mortgage to purchase or refinance an existing project pursuant to section 223(f) of the Act; or

(c) As otherwise provided by the Commissioner.

Sec. 200.72 Zoning, deed and building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental codes, ordinances, regulations and requirements.

Sec. 200.73 Property development.

(a) The property shall be suitable and principally designed for the intended use, as provided by the applicable section of the Act under which the mortgage is insured, and have long-term marketability. Design, construction, substantial rehabilitation and repairs shall be in accordance with standards established by the Commissioner.

(b) A project may include such commercial and community facilities as the Commissioner deems acceptable.

(c) The improvements shall constitute a single project. Not less than five rental dwelling units or personal care units, 20 medical care beds, or 50 manufactured home pads, shall be on one site, except that such limitations do not apply to group practice facilities.

Sec. 200.74 Minimum property standards.

The requirements set forth in subpart S of this part apply to these programs, except for hospitals insured under section 242 of the Act and group practice facilities insured under title XI of the Act.

Sec. 200.75 Environmental quality determinations and standards.

Requirements set forth in 24 CFR part 50, Protection and Enhancement of Environmental Quality, 24 CFR part 51, Environmental Criteria and Standards, 24 CFR part 55, Implementation of Executive Order 11988, Flood Plain Management, and as otherwise required by the Commissioner apply to these programs.

Sec. 200.76 Smoke detectors.

Smoke detectors and alarm devices must be installed in accordance with standards and criteria acceptable to the Commissioner for the protection of occupants in any dwelling or facility bedroom or other primary sleeping area.

Sec. 200.77 Lead-based paint poisoning prevention.

Requirements set forth in 24 CFR part 35 apply to these programs.

Sec. 200.78 Energy conservation.

Construction, mechanical equipment, and energy and metering selections shall provide cost effective energy conservation in accordance with standards established by the Commissioner.

Mortgage Provisions

Sec. 200.80 Mortgage form.

The mortgage shall be:

(a) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property securing the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) Executed by an eligible mortgagor.

(c) A first lien on the property securing the mortgage, which property conforms with the property standards prescribed by the Commissioner.

Sec. 200.81 Disbursement of mortgage proceeds.

The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to the:

- (a) Mortgagor or mortgagor's account;
- (b) Mortgagor's creditors for the mortgagor's account, subject to the mortgagor's consent.

Sec. 200.82 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

- (a) The maximum mortgage term may not exceed the lesser of:
 - (1) Any limits included under the applicable section of the Act.
 - (2) Thirty-five years for existing projects, except that the mortgage term may be up to 40 years under terms and conditions established by the Commissioner, and 40 years for proposed construction and substantial rehabilitation projects.
 - (3) Seventy-five percent of the estimated remaining economic life of the physical improvements.
- (b) The minimum mortgage term shall not be less than 10 years.

Sec. 200.83 Interest rate.

- (a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.
- (b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.
- (c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

Sec. 200.84 Payment requirements.

The mortgage shall provide for:

- (a) A single aggregate payment each month for all payments to be made by the mortgagor to the mortgagee.
- (b) The mortgagor to pay to the mortgagee:
 - (1) Interest and principal on the first day of each month in accordance with an amortization plan agreed upon by the mortgagor, the mortgagee and the Commissioner.
 - (i) Date of first payment to interest shall be the endorsement date or, where there are insured advances, the initial endorsement date.
 - (ii) Date of first payment to principal. The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.
 - (2) An amount on each interest payment date sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.
 - (3) Equal monthly payments as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a

period ending one month prior to the dates on which the same become delinquent.

(4) The mortgage shall further provide:

(i) That such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent.

(ii) For adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefor by the mortgagor.

(c) The mortgagee to apply each mortgagor payment received to the following items in the order set forth:

(1) Premium charges under the contract of mortgage insurance.

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(2) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

Sec. 200.85 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be approved by the Commissioner in accordance with provisions of Sec. 200.71; and

(b) A covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior lien created by an operating loss loan insured pursuant to section 223(d) of the Act, or a supplemental loan insured pursuant to section 241 of the Act.

Sec. 200.86 Covenant for fire and other hazard insurance.

The mortgage shall contain a covenant binding the mortgagor to maintain fire and extended coverage insurance on the property in accordance with terms and conditions established by the Commissioner.

Sec. 200.87 Mortgage prepayment.

(a) Prepayment privilege. Except as provided in paragraph (c) of this section or otherwise established by the Commissioner, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) Prepayment charge. The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage resulting from the certification of cost which the Commissioner may require shall not be construed as a prepayment of the mortgage.

(c) Prepayment of bond-financed or GNMA securitized mortgages. Where the mortgage is given to secure GNMA mortgage-backed securities or a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

(d) HUD override of prepayment restrictions. In the event of a default, the Commissioner may override any lockout, prepayment penalty or combination thereof in order to facilitate a partial or full

refinancing of the mortgaged property and avoid a claim.

Sec. 200.88 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions and standards of the Commissioner for each dollar of each payment to interest or principal more than 15 days in arrears to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Cost Certification

Sec. 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.

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(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.

Sec. 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.

Sec. 200.97 Adjustments resulting from cost certification.

(a) Fee simple site. Upon receipt of the mortgagor's certification

of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements.

(b) Leasehold site. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event shall such amount be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

(c) Adjustment. If the amount calculated in accordance with paragraphs (a) or (b) of this section exceeds the statutory dollar amount limits or loan ratio limits permitted by the section of Act under which the mortgage is to be insured, or program loan ratio limits established by the Commissioner in the absence of statutory limits, the amount must be reduced to the applicable limits before final endorsement.

Endorsement

Sec. 200.100 Insurance endorsement.

The credit instrument shall be initially and finally endorsed simultaneously for insurance pursuant to a commitment to insure upon completion. Where the advances of construction funds are to be insured pursuant to a commitment for insured advances, initial endorsement of the credit instrument shall occur before any mortgage proceeds are insured and the time of final endorsement shall be as set forth in paragraph (b) of this section.

(a) Initial endorsement. The Commissioner shall indicate the insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) Final endorsement. When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to the Commissioner's satisfaction the Commissioner shall indicate on the original credit instrument the total of all advances approved for insurance and again endorse such instrument.

(c) Contract rights and obligations. The Commissioner and the mortgagee or

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lender shall be bound from the date of initial endorsement, whether the initial and final endorsement occur simultaneously or are split, by the provisions of the Contract Rights and Obligations set forth in the respective regulations for each section of the Act, as follows: Section 207 of the Act (24 CFR part 207); Section 213 of the Act (24 CFR part 213); Section 220 of the Act (24 CFR part 220); Section 221 of the Act (24 CFR part 221); Section 231 of the Act (24 CFR part 231); Section 232 of the Act (24 CFR part 232); Section 234 of the Act (24 CFR part 234); Section 241 of the Act (24 CFR part 241); Section 242 of the Act (24 CFR part 242); title XI of the Act (24 CFR part 244).

Sec. 200.101 Mortgagor lien certificate.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire project, including any equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

Regulation of Mortgagors

Sec. 200.105 Mortgagor supervision.

(a) As long as the Commissioner is the insurer or holder of the mortgage, the Commissioner shall regulate the mortgagor by means of a regulatory agreement providing terms, conditions and standards established by the Commissioner, or by such other means as the Commissioner may prescribe.

(b) The Commissioner may delegate to the mortgagee or other party the Commissioner's authority, in whole or in part, in accordance with the terms, conditions and standards established by the Commissioner in any executed Regulatory Agreement or other instrument granting the Commissioner supervision of the mortgagor.

[61 FR 14399, Apr. 1, 1996, as amended at 65 FR 61074, Oct. 13, 2000]

Sec. 200.106 Projects with limited distribution mortgagors and program assistance.

(a) Regulation as limited distribution mortgagors. In addition to regulation under Sec. 200.105, limited distribution mortgagors for projects receiving ``assistance within the jurisdiction of the Department'' (as defined in Sec. 4.3 of this title) may be regulated by the Commissioner as to additional matters, by regulation or otherwise, including as to the amount of the permissible distribution to the mortgagor.

(b) Increased distributions. The Commissioner may permit increased distributions of surplus cash, in excess of the amounts the Commissioner otherwise permits for limited distribution mortgagors, to a limited distribution mortgagor who participates in a HUD-approved initiative or program to preserve housing stock with below-market rents as affordable housing. The increased distribution will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(c) Pre-emption. Any State or local law or regulation that restricts distributions to an amount lower than permitted by the Commissioner under authority of this section is preempted to the extent provided in section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[65 FR 61074, Oct. 13, 2000]