

## § 203.256

pre-insurance review. The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(4) *Indemnification.* By insuring the mortgage, the mortgagee agrees to indemnify HUD under the conditions of section 256(c) of the National Housing Act (12 U.S.C. 1717z-21(c)).

[57 FR 58348, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993, as amended at 60 FR 42759, Aug. 16, 1995; 61 FR 36265, July 9, 1996; 62 FR 30227, June 2, 1997; 63 FR 29507, May 29, 1998; 68 FR 23376, May 1, 2003; 68 FR 65827, Nov. 21, 2003; 69 FR 5, Jan. 2, 2004]

## § 203.256 Insurance of open-end advance.

Insurance on an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance, the date of insurance, and the regulations under which the advance is insured.

## § 203.257 Creation of the contract.

The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgment to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the

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same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

[62 FR 30227, June 2, 1997]

## § 203.258 Substitute mortgagors.

(a) *Selling mortgagor.* Except as provided in paragraph (d) of this section, the mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, only if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under § 203.43h or § 203.43i only if the mortgagor is to occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)).

(2) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part (except a mortgage referred to in paragraph (b)(1) of this section), only if the substitute mortgagor is to occupy the dwelling as a principal residence or as a secondary residence (as these terms are defined in § 203.18(f)) or if the substitute mortgagor is an eligible non-occupant mortgagor (as defined in § 203.18(f)).

(3) With respect to any mortgage covering a dwelling to be occupied as a secondary residence, the loan to value ratio may not exceed 85 percent of the greater of:

(i) The appraised value of the property at the time the mortgage is accepted for insurance; or

(ii) The appraised value of the property at the time approval of a substitute mortgagor is requested.

(c) *Applicability-current mortgages.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor only if the mortgage executed by the original mortgagor was insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after December 15, 1989;

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after December 15, 1989.

(d) *Applicability—earlier mortgages.* If the mortgage was insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after February 5, 1988, but before December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the approved underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after February 5, 1988, but before December 15, 1989, or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after February 5, 1988, but before December 15, 1989, the Commissioner may approve a substitute mortgagor with respect to the mortgage only if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in §203.18(f)), or is an eligible non-occupant mortgagor (as defined in the following sentence), or if the mortgage has a principal balance that is not more than 75 percent of the greater of (i) the appraised value of the property at the time the mortgage is accepted for insurance, or (ii) the appraised value of the property at the time approval of a substitute mortgagor is requested. For purposes of this paragraph (d), the term *eligible non-occupant mortgagor* has the meaning given in §203.18(f), except that paragraph (d)(3)(ii)(A) and (B) of this section apply in place of §203.18(f)(3) (i) and (ii).

(A) A public entity, as provided in section 214 or 247 of the National Housing Act; and

(B) A private nonprofit or public entity, as provided in section 221(h) or 235(j) of the National Housing Act.

If neither paragraph (b) nor the preceding portion of this paragraph (d) ap-

plies, the Commissioner may approve a substitute mortgagor without regard to whether the mortgagor is to occupy the dwelling.

(e) *Direct endorsement.* Mortgagees approved for participation in the Direct Endorsement program under §203.3 may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under this section for mortgages which they own or service, and need not obtain further specific approval from the Commissioner.

(f) *Definition.* As used in this section, the term *substitute mortgagor* includes:

(1) Persons who, upon the release by a mortgagee of a previous mortgagor from personal liability on the mortgage note, assume this liability and agree to pay the mortgage debt; and

(2) Persons who purchase without assuming liability on the mortgage note or purchase where no release is given by the mortgagee to the previous mortgagor.

[55 FR 34806, Aug. 24, 1990, as amended at 57 FR 58349, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993; 61 FR 36453, July 10, 1996]

#### MORTGAGE INSURANCE PREMIUMS—IN GENERAL

##### § 203.259 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures at par plus accrued interest.

[48 FR 28805, June 23, 1983]

##### § 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to §203.280 for mortgages that:

(1) Are insured pursuant to §203.43(c) (if the mortgage to be refinanced was executed prior to July 1, 1991 and the new mortgage is executed on or after April 24, 1992); or insured pursuant to §203.43i; or

(2)(i) Are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by §203.270);

(ii) Are insured pursuant to: (A) An application for a conditional commitment received on or after September 1, 1983; or