[Code of Federal Regulations]

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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.

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(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]