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owners are required to transmit data collected for the 12 months preceding the effective date of the rule, as well as data collected on or after the effective date of the rule. Data collected for the 12 months preceding September 23, 1994 is to include only the tenant's most recent "complete certification" (move-in, initial certification, interim recertification, or annual recertification). When the most recent certification for a tenant is a partial certification (gross rent change, unit transfer, or correction), both the complete and partial certifications must be transmitted.

(e) *Data to be transmitted.* Electronic transmission consists of data transmitted from the HUD-50059, 50059 worksheets, 52670 and 52670A, Parts 1 and 2 and 52671 A through D correctly formatted in accord with the HUD data requirements and in lieu of the hard copy forms.

[58 FR 61022, Nov. 19, 1993, as amended at 59 FR 43474, Aug. 24, 1994]

§ 208.112 Cost.

(a) The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered project operating costs to be paid from project income, and considered project operating costs for the purpose of processing and approving requests for HUD approval of rent increases.

(b) At the owner's option, the cost of the computer software may include service contracts to provide maintenance or training, or both. Regardless of whether an owner obtains service contracts to provide maintenance or training or both, the software must be updated to incorporate changes or revisions in legislation, regulations, handbooks, notices or HUD electronic transmission data format requirements.

(c) The source of funds for the purchase of hardware or software, or contracting for services for electronic transmission, may include current project operating income; an expense item in processing rent increases; a loan from the Reserve for Replacement

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Account, or a release from the Residual Receipts Account.

(d) A loan from the Reserve for Replacements Account must be repaid within a five year period from the release date.

(e) Owners of smaller projects or partially assisted projects with few subsidized units and CAs that administer no more than one project that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management agents, local management associations and management agents with centralized facilities. Owners of multiple projects may centralize the electronic transmission function. However, owners that contract out or centralize the electronic transmission function are required to retain the ability to monitor the day-to-day operations of the project at the project site and be able to demonstrate that ability to the relevant HUD field office.

[58 FR 61022, Nov. 19, 1993, as amended at 59 FR 43475, Aug. 24, 1994]

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

Sec.

213.1 Eligibility requirements.

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COOPERATIVE MANAGEMENT HOUSING
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From Project Mortgage; Expiring Program**

- 213.501 Savings clause.

AUTHORITY: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24553, Dec. 22, 1971, unless otherwise noted.

**Subpart A—Eligibility
Requirements—Projects**

§ 213.1 Eligibility requirements.

The eligibility requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 213 of the National Housing Act (12 U.S.C. 1715e), as amended.

[61 FR 14405, Apr. 1, 1996]

**Subpart B—Contract Rights and
Obligations—Projects**

§ 213.251 Cross-reference.

(a) All of the provisions of subpart B, part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 213 of the National Housing Act, except the following provisions:

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207.251 Definitions.
207.252 First, second, and third premiums.
207.254 Form of endorsement.

(b) For the purposes of this subpart, all references in part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 213 of the Act, and all references in part 207 of this chapter to the General Insurance Fund shall be deemed to refer to the Cooperative Management Housing Insurance Fund in cases involving mortgages which are the obligation of the Cooperative Management Housing Insurance Fund.

(c) The provisions of §§ 207.255, 207.256, 207.257, 207.261, 207.262 and 207.263 of this chapter shall apply to supplementary loans insured under section 213(j) of the Act. In connection with the foregoing provisions the terms *mortgagor*, *mortgagee*, *mortgage* shall be construed to mean *borrower*, *lender*, and *supplementary loan*, including required security instrument.

(d) Where the provisions of this subpart are applicable to supplementary loans, the terms *mortgagor*, *mortgagee*, *mortgage*, shall be construed to mean *borrower*, *lender*, and *supplementary loan*, including required security instrument.

(e) Where the provisions of this subpart are applicable to operating loss loans, the terms *mortgagor*, *mortgagee* and *mortgage* shall be construed to mean *borrower*, *lender* and *operating loss loan*, including required security instrument, respectively.

[36 FR 24553, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

§ 213.252 Definitions.

The definitions contained in § 213.1 shall apply to this subpart and in addition the following terms shall have the meaning indicated.

(a) *Contract of Insurance* means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative and includes the terms, conditions and provisions of this subpart and of the National Housing Act.

(b) *Insured mortgage* means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner.

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(c) *Mortgage* means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) *Mortgagee* means the original lender under a mortgage, its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

(e) *Mortgagor* means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(f) *Project Mortgage* means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

§213.253 Premiums upon initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage or a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of the section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

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(d) *Operating loss loans and supplementary loans.* The provisions of paragraph (a) of this section shall apply to any operating loss loan and to any supplementary loan, except a supplementary loan to finance the acquisition of an existing community facility.

§213.254 Premiums where first principal payment more than one year after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first, second and third premiums shall equal the sum of:

(i) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement, and

(ii) One-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is more than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and second premiums collected shall be adjusted so that the aggregate of the two premiums shall equal the sum of:

(i) One percent of the average outstanding principal obligation of the mortgage for the year following the date of the initial insurance endorsement and

(ii) One-half of one percent per annum of the average outstanding

principal obligation of the mortgage for the period from the first anniversary of the date of initial endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph (a) shall apply to any supplementary loan involving insurance of advances.

§ 213.255 Premiums where first principal payment one year or less after initial endorsement.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of

(i) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment, and

(ii) One-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(2) If the date of the first principal payment of a mortgage is one year or less than one year following the date of the initial insurance endorsement and

the mortgage is paid in full prior to the date of such first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to a mortgage covering Existing Construction which involves insurance of advances for Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph (a) shall apply to a supplementary loan involving insurance of advances.

§ 213.256 Premiums; insurance upon completion.

(a) *Management and Sales Types and Investor Sponsored Projects.* (1) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the first and second premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(2) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon

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Completion and is paid in full prior to the date of the first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to the date the mortgage was paid in full.

(b) *Purchasing cooperatives.* The provisions of paragraph (a) of this section do not apply to the mortgage of a purchasing nonprofit cooperative housing corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

(c) *Existing Construction.* The provisions of paragraph (a) of this section shall apply to Existing Construction not involving insurance of advances but involved Commissioner approved or required repairs, improvements, alterations and additions.

(d) *Supplementary loans; Commitment to Insure Upon Completion.* The provisions of paragraphs (a) and (b) of this section shall apply to a supplementary loan endorsed for insurance pursuant to a Commitment to Insure Upon Completion.

§213.257 Premiums; purchasing cooperatives; Existing Construction; supplementary loans to purchase existing community facility.

(a) Where a mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsor Project or covers Existing Construction not involving Commissioner approved or required repairs, improvements, alterations and additions, the mortgagee, on the date of the insurance endorsement, shall pay a first premium equal to one-half of one percent of the principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment. On the anniversary of the first principal payment, this first premium shall be adjusted to equal one-half of one percent of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to

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one year following the date of the first principal payment.

(b) The premium provisions of paragraph (a) of this section shall apply to a supplementary loan to purchase an existing community facility.

§213.258 Subsequent annual premiums.

(a) Until the mortgage is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(b) The provisions of paragraph (a) of this section shall apply to operating loss loans and to supplementary loans.

§213.259 Computation of subsequent annual premiums.

The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§213.259a Premiums—mortgages insured pursuant to section 238(c) of the Act.

All of the provisions of §§213.253 through 213.259 governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act, except that all mortgage insurance premiums due on such mortgages in accordance with §§213.253 through 213.259 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§213.260 Allowable methods of premium payment.

Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this part.

§ 213.265 Modifications and consolidations.

Where a mortgage covering an investor sponsored project is modified and consolidated with the mortgage of a purchasing nonprofit cooperative housing corporation or trust, it shall be deemed to be paid in full as of the date of such modification and consolidation.

[37 FR 8662, Apr. 29, 1972]

§ 213.266 Initial insurance endorsement.

The Commissioner shall indicate his insurance of the mortgage or supplementary loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage or supplementary loan is insured and the date of insurance.

§ 213.266a Insurance fund obligations.

A mortgage endorsed for insurance under section 213 of the Act shall be the obligation either of the Cooperative Management Housing Insurance Fund or of the General Insurance Fund. The determination of the applicable fund shall be governed by the following:

(a) A mortgage insured under section 213(a)(1) of the Act or under section 213(a)(3) if the project has been acquired by a cooperative corporation or under section 213 (i) or (j) shall be the obligation of the Cooperative Management Housing Insurance Fund, where it has been insured pursuant to a commitment issued on or after August 10, 1965, or insured pursuant to a commitment issued prior to such date, and transferred to the Cooperative Management Housing Insurance Fund.

(b) A mortgage insured under section 213(a)(2) of the Act or under section 213(a)(3) where the project has not been acquired by a cooperative corporation shall be the obligation of the General Insurance Fund. A mortgage insured prior to August 10, 1965, or insured pursuant to a commitment issued prior to such date, where the project has not been transferred to the Cooperative Management Housing Insurance Fund, shall also be the obligation of the General Insurance Fund.

§ 213.267 Effect of insurance endorsement.

From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

§ 213.268 Final insurance endorsement.

When all advances of mortgage or loan proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of all advances he has approved for insurance and again endorse such instrument.

§ 213.269 Endorsement of supplementary loans.

The provisions of §§ 213.266, 213.267, and 213.268 shall apply to supplementary loans.

§ 213.270 Supplementary loans; election of action; claims; debentures.

(a) *Election of action.* Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgement, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

(b) *Maximum claim period.* Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

(c) *Items to be filed on submitting claim.* Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

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(1) The fiscal data pertaining to the loan transaction;

(2) Receipts covering all disbursements as required by the fiscal data form;

(3) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments, are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(4) All hazard insurance policies held on property serving as security for the loan or other evidence of insurance coverage acceptable to the Commissioner, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(5) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(6) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and the se-

curity instrument or instruments to the Commissioner;

(7) Any balance of the loan not advanced to the borrower;

(8) Any cash or property held by the lender or its agents or to which it is entitled; including deposits made for the account of the borrower and which have not been applied in reduction of the principal obligation under the note and security instrument or instruments;

(9) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(10) Any additional information or data which the Commissioner may require.

(d) *Claim computation.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment. The payment shall be in an amount equal to the unpaid principal balance of the supplementary loan plus:

(1) Any accrued interest due on the supplementary loan as of the date of execution of its assignment to the Commissioner;

(2) Any advance made previously under the provisions of the loan instrument and approved by the Commissioner;

(3) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner;

(4) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such cash payment is made, except that when the lender fails to meet any one of the applicable requirements of paragraphs (b) and (c) of this section within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(e) *Debenture interest.* The debentures shall bear interest as provided in § 207.259(e)(6) of this chapter.

(f) *Maturity of debentures.* Debentures shall mature 20 years from the date of issue.

(g) *Registration of debentures.* Debentures shall be registered as to principal and interest.

(h) *Denomination of debentures.* Debentures shall be issued in multiples of \$50 and any difference not in excess of \$50 between the amount of debentures to which the lender is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the lender.

(i) *Redemption of debentures.* Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(j) *Issue date of debentures.* The debentures shall be issued as of the date of the execution of the assignment of the supplementary loan in accordance with the requirements of paragraph (c)(3) of this section.

COOPERATIVE MANAGEMENT HOUSING
INSURANCE AND DISTRIBUTIVE SHARES

§ 213.275 Nature of the Cooperative Management Housing Insurance Fund.

The Cooperative Management Housing Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 213.276 Allocation of Cooperative Management Housing Insurance Fund income or losses.

For any semiannual period in which Cooperative Management Housing Insurance Fund operations shall result in a net income, or loss, the Commissioner shall allocate such net income or such loss to the General Surplus Account, to the Participating Reserve Account, or to both, as he may determine to be in accordance with sound actuarial and accounting practice. In determining net income or loss, the Commissioner shall take into consideration all income received from fees, premiums, and earnings on investments of the Fund, operating expenses, and provision for losses of the Fund.

§ 213.277 Right and liability under the Cooperative Management Housing Insurance Fund.

No mortgagor or mortgagee shall have any vested right in a credit balance in either the General Surplus Account or the Participating Reserve Account. No mortgagor or mortgagee shall be subject to any liability arising under the mutuality of the Cooperative Management Housing Insurance Fund.

§ 213.278 Distribution of distributive share.

When the contract of insurance is terminated by reason of payment in full of the mortgage or by voluntary termination approved by the Commissioner, and at such time or times prior to such termination as the Commissioner may approve, the Commissioner may distribute to a mortgagor under a mortgage that is the obligation of the Cooperative Management Housing Insurance Fund a share of the Participating Reserve Account in such manner and amount as he shall determine to be equitable and in accordance with sound actuarial and accounting practice.

§ 213.279 Maximum amount of distributive share.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate paid scheduled annual premiums of the mortgagor paid to the year of termination of the

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insurance or to the year of payment of the share, if paid prior to termination.

§ 213.280 Finality of determination.

The determination of the Commissioner as to the amount to be paid to any mortgagor from the Cooperative Management Housing Insurance Fund shall be final and conclusive.

Subpart C—Individual Properties Released From Project Mortgage; Expiring Program

§ 213.501 Savings clause.

No new loans are being insured under the Cooperative Housing Mortgage Insurance Program for individual properties released from a project mortgage. Any existing insured loans on individual properties released from a project mortgage under this program will continue to be governed by the regulations on eligibility requirements, contract rights and obligations, and servicing responsibilities in effect as they existed immediately before December 26, 1996.

[61 FR 60160, Nov. 26, 1996]

PART 214—HOUSING COUNSELING PROGRAM

Subpart A—General Program Requirements

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214.3 Definitions.

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214.311 Housing counseling grant funds.

214.313 Housing counseling fees.

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214.317 Reporting.

Subpart E—Other Federal Requirements

214.500 Audit.

214.503 Other requirements.

AUTHORITY: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d).

SOURCE: 72 FR 55648, Sept. 28, 2007, unless otherwise noted.

Subpart A—General Program Requirements

§ 214.1 Purpose.

This part implements the Housing Counseling Program authorized by section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Section 106 authorizes HUD to make grants to, or contract with, public or private organizations to provide a broad range of housing counseling services to homeowners and tenants to assist them in improving their housing conditions and in meeting the responsibilities of tenancy or homeownership. Section 106 also directs HUD to provide housing counseling services only through agencies or individuals that have been certified by HUD as competent to provide such services. The regulations contained in this part prescribe the procedures and requirements by which the Housing Counseling Program will be administered, including the process by which agencies are approved and individuals will be certified to provide the homeownership and rental counseling, as defined by section 106. These regulations apply to all agencies participating in HUD's Housing Counseling Program, and to all organizations or entities that deliver housing counseling, including homeownership counseling or rental housing counseling, required under or provided in connection with HUD programs.

[81 FR 90657, Dec. 14, 2016]

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

Sec.

219.1 Program operations.

219.2 Savings provision.

AUTHORITY: 12 U.S.C. 1715z-1a; 42 U.S.C. 3535(d).

SOURCE: 61 FR 14405, Apr. 1, 1996, unless otherwise noted.

§ 219.1 Program operations.

Effective May 1, 1996, the Flexible Subsidy Program for Troubled Projects will be governed and operate under the statutory provisions codified at 12 U.S.C. 1715z-1a, under the administrative policies and procedures contained in any applicable HUD Handbooks, and other administrative bulletins and notices as the Department may issue from time to time.

§ 219.2 Savings provision.

Part 219, as it existed immediately before May 1, 1996, (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219) will continue to govern the rights and obligations of housing owners, tenants, and the Department of Housing and Urban Development with respect to units and projects assisted under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996. A list of any amendments to this part published after the CFR revision date is available from the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

Subpart A [Reserved]

Subpart B—Contract Rights and Obligations—Homes

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220.814 Election of action.

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220.821 Items to be filed on submitting claim.

220.822 Claim computation; items included.

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220.830 Debenture interest rate.

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220.836 Form and amounts of debentures.

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220.840 Issue date of debentures.

220.842 Cash adjustment.

220.850 Assignment of insured loans.

Subpart E—Servicing Responsibilities—Homes

220.900 Cross-reference.

AUTHORITY: 12 U.S.C. 1713, 1715b, 1715k, and 1735d; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24573, Dec. 22, 1971, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Contract Rights and Obligations—Homes

§ 220.251 Cross-reference.

(a) All of the provisions of subpart B, part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except the following:

- Sec.
- 203.258 Substitute mortgagors.
- 203.259 Scope.
- 203.280 One-time MIP.
- 203.281 Calculation of one-time MIP.
- 203.282 Mortgagee's late charge and interest.
- 203.283 Refund of one-time MIP.
- 203.340 Conditions of special forbearance relief.
- 203.342 Recasting of mortgage.
- 203.343 Partial release, addition or substitution of security.
- 203.350 Assignment of defaulted mortgage—ingeneral.
- 203.350a Assignment of defaulted mortgage.
- 203.351 Application for insurance benefits and fiscal data.
- 203.353 Certification by mortgagee.
- 203.400 Method of payment.
- 203.402a Reimbursement for uncollected interest.
- 203.420 Nature of Mutual Mortgage Insurance Fund.
- 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
- 203.422 Right and liability under Mutual Mortgage Insurance Fund.
- 203.423 Distribution of distributive shares
- 203.424 Maximum amount of distributive shares.
- 203.425 Finality of determination.
- 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
- 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
- 203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(b) For the purposes of this subpart, all references in part 203 of this chapter to section 203 of the act shall be construed to refer to section 220 of the act, and all references to the Mutual Mort-

gage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24573, Dec. 22, 1971, as amended at 42 FR 29304, June 8, 1977; 48 FR 28807, June 23, 1983; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48203, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 55 FR 34808, Aug. 24, 1990]

§ 220.252 Forbearance of foreclosure and assignment of mortgage.

All of the provisions of §§ 203.340 through 203.342, 203.350, 203.352 and 203.353 of this chapter shall apply to mortgages insured under this subpart, except that the provisions relating to forbearance of foreclosure, recasting of the mortgage and assignment of a defaulted mortgage, shall be applicable only to a mortgage covering a property having not more than four dwelling units.

§ 220.253 Substitute mortgagors.

(a) *Selling mortgagor.* 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 subpart A of this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 220.30(d)).

(2) The Commissioner may approve as a substitute mortgagor an eligible non-occupant mortgagor (as defined in § 220.30(d)) with respect to any mortgage insured under this part, only if the outstanding balance of the mortgage does not exceed the Commissioner's estimate of:

(i) The replacement cost of the property as of the date the mortgage was originally accepted for insurance, or the date the substitute mortgagor is approved by the Commissioner, which ever is greater, in the case of a dwelling described in § 220.30(a) (1) or (2); or

(ii) The cost of repair or rehabilitation, plus the Commissioner's estimate of the replacement cost of the property as of either the date the mortgage was originally accepted for insurance, or the date the substitute mortgagor is

approved by the Commissioner, whichever is greater, in the case of a dwelling described in § 220.30(a) (3) or (4).

(c) *Applicability—current mortgagor.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, only if the mortgage executed by the original mortgagor met the conditions of § 203.258(c) of this chapter.

(d) *Applicability—earlier mortgagor.* The occupancy and similar requirements set forth in § 203.258(d) of this chapter apply to mortgages insured under subpart A of this part.

(e) 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 debts; 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 34808, Aug. 24, 1990, as amended at 57 FR 58351, Dec. 9, 1992]

§ 220.275 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

INSURED HOME IMPROVEMENT LOANS

§ 220.350 Cross-reference.

(a) All of the provisions of §§ 203.440 through 203.495 of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to home improvement loans on one-to-four family dwellings under section 220(h) of the Act, except as set out in paragraph (b).

(b) The provisions of §§ 203.473(a) shall not be applicable to home improvement loans on one-to-four family dwellings under section 220(h) of the Act.

[52 FR 1330, Jan. 13, 1987]

Subpart C—Eligibility Requirements—Projects

§ 220.501 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 220 of the National Housing Act (12 U.S.C. 1715k), as amended.

[61 FR 14405, Apr. 1, 1996]

Subpart D—Contract Rights and Obligations—Projects

PROJECT MORTGAGE INSURANCE

§ 220.751 Cross-reference.

(a) All of the provisions of subpart B, part 207, of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except § 207.256b Modification of mortgage terms.

(b) For the purposes of the portion of this subpart, covering multifamily project mortgages, all references in part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 220 of the National Housing Act.

[36 FR 24573, Dec. 22, 1971, as amended at 80 FR 51468, Aug. 25, 2015]

§ 220.753

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§ 220.753 Forbearance relief.

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

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

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

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

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its decision to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 220.765 shall be applicable.

§ 220.765 Special insurance benefits— forbearance relief cases.

(a) Upon a failure of the mortgagor to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, the mortgagee shall be entitled to obtain a special insurance payment in cash, in lieu of the insurance benefits otherwise pro-

vided under this subpart. To receive the special insurance payment, the mortgagee shall assign the mortgage to the Commissioner in compliance with the requirements of § 207.258(b) of this chapter.

(b) The special insurance benefits to the mortgagee shall be a cash payment computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, there shall be included in the cash payment an amount equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the payment is made; except that when the mortgagee fails to meet any of the applicable requirements of § 207.258(b) of this chapter and § 220.753(c) within the specified times and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such debenture interest allowance shall be computed only to the date on which the particular required action should have been taken.

INSURED PROJECT IMPROVEMENT LOANS

§ 220.800 Definitions.

All of the definitions contained in § 220.550 shall apply to §§ 220.800 *et seq.* In addition the following terms shall have the meaning indicated:

(a) *Contract of insurance* means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 220.800 *et seq.* and the applicable provisions of the Act.

(b) *Maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

§ 220.801 Initial insurance endorsement.

The Commissioner shall indicate his insurance of the loan by endorsing the

original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

§ 220.802 Final insurance endorsement.

When all advances of loan proceeds have been made, and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he shall indicate on the original credit instrument the total of advances he has approved for insurance and again endorse such instrument.

§ 220.803 Effect of insurance endorsement.

From the date of initial endorsement, the Commissioner and the lender shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

§ 220.804 Insurance premiums.

(a) *First premium.* The lender, upon the initial endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one-half of one percent of the original face amount of the note.

(b) *Second premium; first payment more than one year following initial endorsement.* If the date of the first principal payment is more than one year following the date of initial insurance endorsement, the lender, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the loan.

(c) *Third premium.* On the date of the first principal payment, the lender shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the note for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obli-

gation of the note for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(d) *Second premium; first payment one year or less following initial endorsement.* If the date of the first principal payment is one year, or less than one year following the date of initial insurance endorsement, the lender upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of (1) one percent per annum of the average outstanding principal obligation of the note for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the note for the year following the date of the first principal payment.

(e) *Second premium; commitment to insure upon completion.* Where the note is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the lender on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the note for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the note for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(f) *Annual insurance premium.* Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one-half of one percent of the average outstanding principal obligation of

§ 220.804a

the loan for the year following the date on which such premium becomes payable.

(g) *Method of premium payment.* Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in §§ 220.800 *et seq.*

(h) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 220.804a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978]

§ 220.805 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

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§ 220.806 Pro rata refund of insurance premium.

Upon termination of loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the date of the prepayment or the effective date of the voluntary termination of the contract of insurance.

§ 220.810 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument and such default continues for a period of 30 days, the note or security instrument shall be considered in default for the purposes of §§ 220.800 *et seq.*

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default, provided the lender because of such default, has exercised its right under the note or security instrument and accelerated the debt.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days, the lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 220.811 Date of default.

For the purposes of §§ 220.800 *et seq.*, the date of default shall be considered as:

(a) The date of the first uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 220.812 Notice of default.

(a) If the default as defined in § 220.810 is not cured within the 30 day grace period, the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact the lender may not have elected to accelerate the debt.

§ 220.813 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or otherwise being apprised thereof, the Commissioner reserves the right to require the lender to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 220.814 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of this section, the lender may not, except with the approval of the Commissioner, both proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 220.820 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 220.821 Items to be filed on submitting claim.

Within 30 days after the filing of the notice of intention to file claim, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

- (a) The fiscal data pertaining to the loan transaction;
- (b) Receipts covering all disbursements as required by the fiscal data form;
- (c) The original note and any security instrument or instruments which

shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments, that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counter claims thereto, and that the lender has a good right to assign such note and security instrument or instruments;

(d) All hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security instrument;

(e) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default, and all claims of the lender against the borrower or others arising out of the loan transaction;

(f) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner.

(g) Any property held by the lender or its agents or to which it is entitled and, if payment is requested in debentures, any cash held by the lender or its agents or to which it is entitled, including deposits made for the account of the borrower, and which have not

§ 220.822

been applied in reduction of the principal of the mortgage indebtedness;

(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(i) Any additional information or data which the Commissioner may require.

§ 220.822 Claim computation; items included.

(a) *Assignment of loan.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in an amount equal to the unpaid principal balance of the loan plus:

(1) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(2) Any advances approved by the Commissioner made previously by the lender under the provisions of the note of security instrument or instruments.

(3) Reimbursement for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(4) Reimbursement for premiums paid on any hazard insurance policies held on the property.

(5) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned as of the date insurance settlement occurs, except that when the lender fails to meet any one of the applicable requirements of §§ 220.812, 220.820, and 220.821 within the specified time (or within such further time as the Commissioner may approve in writing), the debenture interest shall be computed only to the date to which the particular action should have been taken or to which it was extended.

(b) [Reserved]

[36 FR 24573, Dec. 22, 1971, as amended at 80 FR 51468, Aug. 25, 2015]

§ 220.823 Claim computation; items deducted.

If the lender is to receive payment in cash, there shall be deducted from the total of the added items in § 220.822 the following:

(a) Any balance of the loan not advanced to the borrower;

(b) Any cash held by the lender or its agents or to which it is entitled; in-

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cluding deposits made for the account of the borrower and which have not been applied in reduction of the principal obligation under the note and security instrument or instruments.

§ 220.830 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued or as of the date the loan was endorsed for insurance, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

[47 FR 26125, June 17, 1982]

§ 220.832 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 220.834 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 220.836 Form and amounts of debentures.

Debentures issued under subpart D of this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

[59 FR 49816, Sept. 30, 1994]

§ 220.838 Redemption of debentures.

Debentures shall, at the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semiannual interest payment date on three months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the

debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

§ 220.840 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan to the Commissioner.

§ 220.842 Cash adjustment.

Any difference of less than \$50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

[59 FR 49816, Sept. 30, 1994]

§ 220.850 Assignment of insured loans.

(a) An insured loan may not be transferred or pledged prior to the full disbursement of the loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the Commissioner may prescribe. Subsequent to full disbursement such loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm, or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan by means of a declaration of trust or by a participation or trust certificate or by any other device, unless with the prior written approval of the Commissioner, which approval may be subject to such conditions and qualifications as the

Commissioner in his discretion may prescribe: *Provided*, That this paragraph shall not be applicable to any loan so long as it is held in a common trust fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as a trustee, executor or administrator; and in conformity with the rules and regulations prevailing from time to time of the Board of Governors of the Federal Reserve System, pertaining to the collective investment of trust funds: *Provided further*, That this paragraph shall not be applicable to any loan so long as it is held in a common trust estate administered by a bank or trust company which is subject to the inspection and supervision of a governmental agency, exclusively for the benefit of other banking institutions which are subject to the inspection and supervision of a governmental agency, and which are authorized by law to acquire beneficial interests in such common trust estate, nor to any loan transferred to such a bank or trust company as trustee exclusively for the benefit of outstanding owners of undivided interest in the trust estate, under the terms of certificates issued and sold more than three years prior to said transfer, by a corporation which is subject to the inspection and supervision of a governmental agency.

Subpart E—Servicing Responsibilities—Homes

§ 220.900 Cross-reference.

All of the provisions of subpart C, part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48203, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE—SAVINGS CLAUSE

Subpart A—Eligibility Requirements—Low Cost Homes—Savings Clause

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221.1 Savings clause.

Subpart B—Contract Rights and Obligations—Low Cost Homes

221.251 Cross-reference.
 221.252 Substitute mortgagors.
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221.300 Changes in the plan of apartment ownership.
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 221.310 Assessment of taxes.
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Subpart C—Eligibility Requirements—Moderate Income Projects

221.501 Eligibility requirements.

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 221.790 Debenture interest rate.
 221.795 Displacement—below market interest rate mortgages.

Subpart E—Servicing Responsibilities—Low Cost Homes

221.800 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1715l, and 1735d; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24587, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Low Cost Homes—Savings Clause

§ 221.1 Savings clause.

(a) Effective February 20, 2001, the authority to insure mortgages under section 221(d)(2) of the National Housing Act (12 U.S.C. 1715l(d)(2)) for low cost and moderate income mortgage insurance is terminated, except that HUD will endorse for insurance validly processed mortgages under direct endorsement where the credit worksheet was signed by the mortgagee's underwriter before February 20, 2001.

(b) Subpart A of this part, as it existed immediately before February 20, 2001, will continue to govern the rights and obligations of insured mortgage lenders, mortgagors, and HUD with respect to section 221(d)(2) single family loans insured before February 20, 2001, or in accordance with paragraph (a) of this section, pursuant to the applicable provisions of this subpart.

[66 FR 5913, Jan. 19, 2001]

Subpart B—Contract Rights and Obligations—Low Cost Homes

§ 221.251 Cross-reference.

(a) All of the provisions of subpart B, part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings insured under section 221 of the National Housing Act, except the following provisions:

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203.258 Substitute mortgagors.
 203.259a Scope.
 203.260 Amount of Mortgage Insurance Premium (MIP).
 203.261 Calculation of MIP.
 203.262 Due date of MIP.
 203.264 Payment of MIP.
 203.266 Period covered by MIP.
 203.268 Pro rata payment of MIP.
 203.280 One-time MIP.
 203.281 Calculation of one-time MIP.
 203.282 Mortgagee's late charge and interest.
 203.283 Refund of one-time MIP.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE—SAVINGS CLAUSE

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221.1 Savings clause.

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221.800 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1715l, and 1735d; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24587, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements—Low Cost Homes—Savings Clause

§ 221.1 Savings clause.

(a) Effective February 20, 2001, the authority to insure mortgages under section 221(d)(2) of the National Housing Act (12 U.S.C. 1715l(d)(2)) for low cost and moderate income mortgage insurance is terminated, except that HUD will endorse for insurance validly processed mortgages under direct endorsement where the credit worksheet was signed by the mortgagee's underwriter before February 20, 2001.

(b) Subpart A of this part, as it existed immediately before February 20, 2001, will continue to govern the rights and obligations of insured mortgage lenders, mortgagors, and HUD with respect to section 221(d)(2) single family loans insured before February 20, 2001, or in accordance with paragraph (a) of this section, pursuant to the applicable provisions of this subpart.

[66 FR 5913, Jan. 19, 2001]

Subpart B—Contract Rights and Obligations—Low Cost Homes

§ 221.251 Cross-reference.

(a) All of the provisions of subpart B, part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings insured under section 221 of the National Housing Act, except the following provisions:

Sec.

203.258 Substitute mortgagors.
 203.259a Scope.
 203.260 Amount of Mortgage Insurance Premium (MIP).
 203.261 Calculation of MIP.
 203.262 Due date of MIP.
 203.264 Payment of MIP.
 203.266 Period covered by MIP.
 203.268 Pro rata payment of MIP.
 203.280 One-time MIP.
 203.281 Calculation of one-time MIP.
 203.282 Mortgagee's late charge and interest.
 203.283 Refund of one-time MIP.

- 203.288 Discontinuance of adjusted premium charge.
- 203.295 Voluntary termination of insurance.
- 203.389 Waived title objections.
- 203.400 Method of payment.
- 203.420 Nature of Mutual Mortgage Insurance Fund.
- 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
- 203.422 Right and liability under Mutual Mortgage Insurance Fund.
- 203.423 Distribution of distributive shares.
- 203.424 Maximum amount of distributive shares.
- 203.425 Finality of determination.
- 203.436 Claim procedure—graduated payment mortgages.
- 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
- 203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
- 203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(b) For the purposes of this subpart, all references in part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972; 41 FR 42949, Sept. 29, 1976; 42 FR 29304, June 8, 1977; 47 FR 30754, July 15, 1982; 48 FR 28807, June 23, 1983; 51 FR 21874, June 16, 1986; 52 FR 8069, Mar. 16, 1987; 52 FR 28470, July 30, 1987; 52 FR 48204, Dec. 21, 1987; 53 FR 9869, Mar. 28, 1988; 55 FR 34810, Aug. 24, 1990; 61 FR 37801, July 19, 1996]

§ 221.252 Substitute mortgagors.

(a) *Selling mortgagor.* 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.* The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under subpart A of this part, if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 221.20(c)) or is a private nonprofit or public entity as provided in section 221(h) of the National Housing Act.

(c) *Applicability—current mortgagor.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor, only if the mortgage executed by the original mortgagor met the conditions of § 203.258(c) of this chapter.

(d) *Applicability—earlier mortgagor.* The occupancy and similar requirements set forth in § 203.258(d) of this chapter apply to mortgages insured under subpart A of this part.

(e) Mortgagees approved for participation in the Direct Endorsement program under § 203.3 of this chapter may, subject to limitations established by the Commissioner, themselves approve an appropriate substitute mortgagor under the section 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 debts 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 34810, Aug. 24, 1990, as amended at 57 FR 58351, Dec. 9, 1992]

§ 221.254 Mortgage insurance premiums.

(a) All of the provisions of §§ 203.260 through 203.295 of this chapter relating to mortgage insurance premiums shall apply to mortgages insured under this subpart, except that as to mortgages meeting the special requirements of § 221.60 or § 221.65, such provisions shall only be applicable under the circumstances prescribed in paragraph (b) of this section. Notwithstanding any provision in the mortgage instrument, there shall be no adjusted mortgage insurance premium or voluntary termination charge due the Commissioner on account of the prepayment of any mortgage or the voluntary termination of any mortgage insurance contract where (1) The mortgage is prepaid in full, or (2) the Commissioner receives a request for voluntary termination on or after May 1, 1972.

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(b) Whenever the interest rate on a mortgage insured under this part as having met the special requirement of § 221.60 or § 221.65 shall have been increased to the maximum rate in accordance with § 221.60(j), § 221.65(d)(4), or § 221.65(d)(5), the provisions of §§ 203.260 through 203.295 of this chapter relating to mortgage insurance premiums shall apply except that:

(1) References to the original principal amount shall be construed as the scheduled unpaid principal balance, without taking into account delinquent payments or prepayments, on the date of the change in interest rate required under the mortgage.

(2) References to the date of the issuance of a Mortgage Insurance Certificate or the date of the endorsement of the credit instrument or the date the insurance becomes effective shall be construed as the date of the change in interest required under the mortgage.

(3) References to the first year of amortization under the mortgage shall be construed as the period beginning on the date of the change in interest rate required under the mortgage and ending on the next anniversary of the beginning of amortization.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 221.255 Assignment option.

(a) A mortgagee holding a mortgage insured pursuant to a conditional or firm commitment issued on or before November 30, 1983 has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the mortgage securing it, provided the mortgage is not in default at the expiration of 20 years from the date of final endorsement of the credit instrument. In processing a mortgagee's claim for insurance benefits under this section, the Commissioner may direct the mortgagee to assign, transfer and deliver the original credit instrument, and the mortgage securing it, directly to the Government National Mortgage Association (GNMA). Upon such assignment, transfer and delivery, either to the Commissioner or to GNMA, as directed, the mortgage insurance contract shall terminate and the mortgagee shall be entitled to re-

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ceive insurance benefits in accordance with this section.

(b) The mortgagee may exercise its assignment option within 1 year following the twentieth anniversary of the date the mortgage was endorsed for insurance.

(c) Upon the exercise of the assignment option the Commissioner shall issue to the assignor mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

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

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

(f) Debentures shall bear interest from the date of issue, payable semi-annually on the first day of January and the first day of July of each year at the rate in effect on the issue date, a date which shall be established as provided in § 203.410 of this chapter. The interest rate shall be established by the Commissioner in an amount not in

excess of the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the 6-month period (consisting of January through June, or July through December) which includes the issuance date of such debentures, which applicable rate for each 6-month period shall be determined by the Secretary of the Treasury, at the request of the Commissioner, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of 15 years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum.

[36 FR 24587, Dec. 22, 1971, as amended at 49 FR 12697, Mar. 30, 1984]

§ 221.256 Interest rate increase and payment of mortgage insurance premiums on mortgages under § 221.60 and § 221.65.

(a) Where a mortgage meets the special requirements of § 221.60 or § 221.65, the following procedures are applicable:

(1) The mortgagee shall determine, at least biennially, whether the mortgagor has continued to occupy the property securing the mortgage. If the mortgagee determines that the mortgagor is not occupying the property or that the mortgagor has sold the property subject to the mortgage to a purchaser not qualifying under the provisions of § 221.60(h) or § 221.65(d)(4) (as appropriate) for the continuation of a below market interest rate, interest on such mortgage shall be computed by the mortgagee at the highest rate permissible under the mortgage. The computation at the higher rate shall be effective from the first day of the month following the month in which the right to collect interest at the increased rate first accrued, as determined by the mortgagee.

(2) The mortgagee shall determine the mortgagor's family income, at least biennially, and shall increase the mortgage interest pursuant to the requirements of §§ 221.60(g) and

221.65(d)(5), as appropriate, to comply with the requirements of such sections. The computation at the higher rate shall be effective from the first day of the month following the month in which the mortgagee determines that the mortgagor's family income was increased.

(b) The mortgagee shall notify the Commissioner, on a form prescribed by the Commissioner, within 30 days of making the determination of the right to compute interest at the higher rate, as provided in paragraph (a) of this section, of:

(1) The date on which such right first accrued, and

(2) The outstanding principal balance of the mortgage on the first day of the month following the date on which such right first accrued.

(c) The liability for payment of mortgage insurance premiums shall begin on and be computed from the first day of the month following the date on which the right to compute interest at the higher rate shall have first accrued.

[36 FR 24587, Dec. 22, 1971, as amended at 37 FR 8663, Apr. 29, 1972]

§ 221.275 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

§ 221.280 Waived title objections.

(a) *General provisions.* All of the provisions of § 203.389 of this chapter (relating to the waiver by the Commissioner of objections to title) shall apply to mortgages insured under this subpart, with the exception of mortgages involving condominium units.

(b) *Provisions applicable to condominium units.* Where the mortgage involves a condominium unit, the Commissioner shall not object to title by reason of the following matters:

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(1) Violations of a restriction based on race, color, or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(2) Easements for public utilities along one or more of the property lines, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(3) Encroachments on the subject property by improvements on adjoining property, provided such encroachments do not interfere with the use of any improvements on the subject property.

(4) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property.

(5) Customary buildings or use restrictions for breach of which there is no reversion and which have not been violated to a material extent.

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§ 221.300 Changes in the plan of apartment ownership.

The mortgagee shall notify the Commissioner of any changes in the plan of apartment ownership and in the administration of the property. Such notification shall be given either at the time of the conveyance of the property or at the time of the assignment of the mortgage. Any changes in such plan shall require approval by the Commissioner.

§ 221.305 Condition of the multifamily structure.

(a) When a family unit is conveyed or a mortgage is assigned to the Commissioner, the family unit and the common areas and facilities (including restricted common areas and facilities) designated for the particular unit shall be undamaged by fire, earthquake, tornado, or boiler explosion, except if the property has been damaged, either of the following actions shall be taken:

(1) The property may be repaired prior to its conveyance or prior to the

assignment of the mortgage to the Commissioner.

(2) With the prior approval of the Commissioner, the property may be conveyed or the mortgage assigned to the Commissioner without repairing the damage. In such instances, the Commissioner shall deduct from the insurance benefits either his estimate of the decrease in value of the family unit or the amount of any insurance recovery received by the mortgagee, whichever is the greater.

(b) If the property has been damaged by fire and such property was not covered by fire insurance at the time of the damage, the mortgagee may convey the property or assign the mortgage to the Commissioner without deduction from the insurance benefits for any loss occasioned by such fire if the following conditions are met:

(1) The property shall have been covered by fire insurance at the time the mortgage was insured.

(2) The fire insurance shall have been later cancelled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the fire insurance or of the refusal of the insuring company to renew the fire insurance. This notification shall have been accompanied by a certification of the mortgagee that diligent efforts were made, but it was unable to obtain fire insurance coverage at reasonably competitive rates and that it will continue its efforts to obtain adequate fire insurance coverage at competitive rates.

§ 221.310 Assessment of taxes.

When a family unit is conveyed to the Commissioner or a mortgage is assigned to the Commissioner, the unit shall be assessed and subject to assessment for taxes pertaining only to that unit.

§ 221.315 Certificate of tax assessment.

The mortgagee shall certify, as of the date of filing for record of the deed or assignment of the mortgage to the Commissioner, that the family unit is assessed and subject to assessment for taxes pertaining to that unit.

§ 221.320 Certificate or statement of condition.

(a) At the time of the assignment of the mortgage or conveyance of the property to the Commissioner, the mortgagee shall, as of the date of the filing for record of the deed or assignment,

(1) Certify that the conditions of § 221.305(a) have been met; or

(2) Submit a statement describing any such damage that may still exist.

(b) In the absence of evidence to the contrary, the mortgagee's certificate or its statement as to damage shall be accepted by the Commissioner as establishing the condition of the family unit and the common areas and facilities including restricted common areas and facilities designated for the particular unit.

§ 221.325 Cancellation of hazard insurance.

The provisions of § 203.382 of this chapter are incorporated by reference and shall apply to hazard insurance policies carried solely for the family unit.

Subpart C—Eligibility Requirements—Moderate Income Projects**§ 221.501 Eligibility requirements.**

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

[61 FR 14405, Apr. 1, 1996]

Subpart D—Contract Rights and Obligations—Moderate Income Projects**§ 221.751 Cross-reference.**

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

Sec.
207.252 First, second, and third premium.

207.252a Premiums—operating loss loans.
207.259 Insurance benefits.

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

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

§ 221.753 Termination of mortgage insurance.

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

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

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

[55 FR 38958, Sept. 21, 1990]

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

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

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

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

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

§ 221.761 Forbearance relief.

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

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

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

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

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

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

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§ 221.762 Payment of insurance benefits.

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

(a) [Reserved]

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

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

[36 FR 24587, Dec. 22, 1971, as amended at 44 FR 40890, July 13, 1979; 80 FR 51468, Aug. 25, 2015]

§ 221.763 Special insurance benefits— forbearance relief cases.

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

(b) The special insurance benefit to the mortgagee shall be a cash payment computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture

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

§ 221.770 Assignment option.

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

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

§ 221.775 Option period.

The mortgagee may exercise its option to assign within one year fol-

lowing the twentieth anniversary of the date the mortgage was finally endorsed for insurance.

§ 221.780 Issuance of debentures.

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

[59 FR 49816, Sept. 30, 1994]

§ 221.785 Date of maturity of debentures.

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

§ 221.790 Debenture interest rate.

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

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§ 221.795 Displacement—below market interest rate mortgages.

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

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

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

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

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

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

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

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

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided

to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[59 FR 29330, June 6, 1994]

Subpart E—Servicing Responsibilities—Low Cost Homes

§ 221.800 Cross-reference.

All of the provisions of subpart C, part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the

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National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 221 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Subpart A—Eligibility Requirements

Sec.

231.1 Eligibility requirements.

Subpart B—Contract Rights and Obligations

231.251 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24615, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 231.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multi-family project mortgages insured under section 231 of the National Housing Act (12 U.S.C. 1715v), as amended.

[61 FR 14406, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations

§ 231.251 Cross-reference.

(a) All of the provisions of part 207, subpart B of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages insured under section 231 of such Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

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PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

Subpart A—Eligibility Requirements

Sec.

232.1 Eligibility requirements, generally; applicability of certain requirements.

232.2 License.

232.3 Eligible borrower.

232.7 Bathroom.

232.11 Establishment and maintenance of long-term debt service reserve account.

Subpart B—Contract Rights and Obligations

232.251 Cross-reference.

232.252 Definitions.

232.254 Withdrawal of project funds, including for repayments of advances from the borrower, operator, or management agent.

232.256 Partial payment of claims.

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

232.500 Definitions.

FEEES AND CHARGES

232.505 Application and application fee.

232.510 Commitment and commitment fee.

232.515 Refund of fees.

232.520 Maximum fees and charges by lender.

232.522 Inspection fee.

ELIGIBLE SECURITY INSTRUMENTS

232.525 Note and security form.

232.530 Disbursement of proceeds.

232.535 Loan multiples—minimum principal.

232.540 Method of loan payment and amortization period.

232.545 Covenant against liens.

232.550 Accumulation of next premium.

232.555 Security instrument and lien.

232.560 Interest rate.

232.565 Maximum loan amount.

232.570 Endorsement of credit instrument.

232.580 Application of payments.

232.585 Prepayment privilege and prepayment charge.

232.586 Minimum principal loan amount.

PROPERTY REQUIREMENTS

232.590 Eligibility of property.

232.591 Smoke detectors.

TITLE

232.595 Eligibility of title.

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National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 221 of the National Housing Act, except §§ 203.664 through 203.666.

[52 FR 48204, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988]

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Subpart A—Eligibility Requirements

Sec.

231.1 Eligibility requirements.

Subpart B—Contract Rights and Obligations

231.251 Cross-reference.

AUTHORITY: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24615, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 231.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multi-family project mortgages insured under section 231 of the National Housing Act (12 U.S.C. 1715v), as amended.

[61 FR 14406, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations

§ 231.251 Cross-reference.

(a) All of the provisions of part 207, subpart B of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages insured under section 231 of such Act.

(b) For the purposes of this subpart all references in part 207 of this chapter to section 207 of the Act shall be construed to refer to section 231 of the Act.

24 CFR Ch. II (4-1-19 Edition)

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

Subpart A—Eligibility Requirements

Sec.

232.1 Eligibility requirements, generally; applicability of certain requirements.

232.2 License.

232.3 Eligible borrower.

232.7 Bathroom.

232.11 Establishment and maintenance of long-term debt service reserve account.

Subpart B—Contract Rights and Obligations

232.251 Cross-reference.

232.252 Definitions.

232.254 Withdrawal of project funds, including for repayments of advances from the borrower, operator, or management agent.

232.256 Partial payment of claims.

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Fire Safety Equipment

232.500 Definitions.

FEEES AND CHARGES

232.505 Application and application fee.

232.510 Commitment and commitment fee.

232.515 Refund of fees.

232.520 Maximum fees and charges by lender.

232.522 Inspection fee.

ELIGIBLE SECURITY INSTRUMENTS

232.525 Note and security form.

232.530 Disbursement of proceeds.

232.535 Loan multiples—minimum principal.

232.540 Method of loan payment and amortization period.

232.545 Covenant against liens.

232.550 Accumulation of next premium.

232.555 Security instrument and lien.

232.560 Interest rate.

232.565 Maximum loan amount.

232.570 Endorsement of credit instrument.

232.580 Application of payments.

232.585 Prepayment privilege and prepayment charge.

232.586 Minimum principal loan amount.

PROPERTY REQUIREMENTS

232.590 Eligibility of property.

232.591 Smoke detectors.

TITLE

232.595 Eligibility of title.

unit in the same building/complex in order to carry out the project, if either:

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

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

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

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

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

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

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

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

(3) The mortgagor may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement

housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the mortgagor's execution of the agreement covering the rehabilitation, demolition or acquisition.

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

[59 FR 29331, June 6, 1994]

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

Sec.

241.1 Eligibility requirements.

Subpart B—Contract Rights and Obligations

241.251 Cross-reference.

241.260 Definitions.

241.261 Payment of insurance benefits.

241.265 Insurance of property against flood.

241.270 Refund upon termination of insurance.

241.275 No vested right in fund.

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Energy Conserving Improvements, Solar Energy Systems, and Individual Utility Meters in Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

241.500 Definitions.

FEES AND CHARGES

241.505 Processing of applications and required fees.

241.510 Commitments.

241.515 Inspection fee.

241.520 Fees on increases.

241.525 Refund of fees.

241.530 Maximum fees and charges by lender.

ELIGIBLE SECURITY INSTRUMENTS

241.530a Note and security form.

241.535 Loan multiples—minimum principal.

241.540 Method of loan payment and amortization period.

241.545 Covenant against liens.

241.550 Accumulation of next premium.

241.555 Security instrument and lien.

241.560 Agreed interest rate.

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- 241.565 Maximum loan amount.
- 241.570 Insurance endorsement.
- 241.580 Application of payments.
- 241.585 Prepayment privilege and prepayment charge.
- 241.586 Minimum principal loan amount.

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- 241.590 Eligibility of property.

TITLE

- 241.595 Eligibility of title.
- 241.600 Title evidence.

FORM OF CONTRACT

- 241.605 Contract requirements.
- 241.610 Assurance of completion.
- 241.615 Certification of cost requirements.

ELIGIBLE BORROWERS

- 241.625 Eligible borrowers.
- 241.626 Disclosure and verification of Social Security and Employer Identification Numbers.

SPECIAL REQUIREMENTS

- 241.630 Maximum insurance against loss.
- 241.635 Regulatory agreement.
- 241.640 Employment discrimination prohibited.
- 241.645 Labor standards and prevailing wage requirements.

Subpart D—Contract Rights and Obligations—Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

- 241.800 Definitions.

PREMIUMS

- 241.805 Insurance premiums.
- 241.805a Mortgagee's late charge.
- 241.815 Termination of insurance.
- 241.825 Pro rata refund of insurance premium.

RIGHTS AND DUTIES OF LENDER UNDER THE CONTRACT OF INSURANCE

- 241.830 Definition of default.
- 241.840 Date of default.
- 241.850 Notice of default.
- 241.860 Commissioner's right to require acceleration.
- 241.865 Election by the lender.
- 241.875 Maximum claim period.
- 241.880 Items to be delivered on submitting claim.
- 241.885 Insurance benefits.
- 241.890 Characteristics of debentures.
- 241.893 Cash adjustment.

ASSIGNMENTS

- 241.895 Assignment of insured loans.

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EXTENSION OF TIME

- 241.897 Actions to be taken by lender.

RIGHTS IN HOUSING FUND

- 241.900 No vested right in fund.
- 241.905 Effect of amendments.

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

- 241.1000 Purpose and scope.
- 241.1005 Definitions.
- 241.1010 Feasibility letter.
- 241.1015 Processing of applications and required fees.
- 241.1020 Commitments.
- 241.1025 Refund of fees.
- 241.1030 Mortgage insurance premiums.
- 241.1035 Charges by lender.
- 241.1040 Eligible lenders.
- 241.1045 Note and security form.
- 241.1046 Rental assistance.
- 241.1050 Method of loan payment.
- 241.1055 Date of first payment to principal.
- 241.1060 Maturity.
- 241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248 of this chapter.
- 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter.
- 241.1068 Renegotiation of an equity loan.
- 241.1069 Escrow requirements.
- 241.1070 Agreed interest rate.
- 241.1080 Eligibility of title.
- 241.1085 Title evidence.
- 241.1090 Accumulation of next premium.
- 241.1095 Application of payments.
- 241.1100 Prepayment privilege and charges.
- 241.1105 Late charges.
- 241.1120 Mortgagee's consent.

Subpart F—Insurance for Equity Loans and Acquisition Loans—Contract Rights and Obligations

- 241.1200 Cross-references.
- 241.1205 Payment of insurance benefits.
- 241.1210 Condition for payment of insurance benefits.
- 241.1215 Calculation of insurance benefits.
- 241.1220 Termination of insurance benefits.
- 241.1230 No vested right in fund.
- 241.1235 Cross default.
- 241.1245 Insurance endorsement.
- 241.1250 Effect of endorsement.

AUTHORITY: 12 U.S.C. 1715b, 1715z-6, and 1735d; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24653, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 241.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 241 of the National Housing Act (12 U.S.C. 1715z-6), as amended.

[61 FR 14407, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations

§ 241.251 Cross-reference.

(a) *Projects with a HUD-insured or HUD-held mortgage.* All of the provisions of subpart B, part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project and group practice facility mortgages insured under section 241 of the National Housing Act, except the following provisions:

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207.251 Definitions.
207.253a Termination of insurance contract.
207.259 Insurance benefits.
207.260 Protection of mortgage security.
207.262 No vested right in fund.

(b) For the purposes of this subpart, the terms *mortgagor*, *mortgagee* and *mortgage*, as used in subpart B, part 207 of this chapter shall be construed to mean *borrower*, *lender* and *supplementary loan (including the security instrument)*, respectively.

(c) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving a loan insured under subpart A of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

[36 FR 24653, Dec. 22, 1971, as amended at 37 FR 8664, Apr. 29, 1972; 48 FR 57129, Dec. 28, 1983; 57 FR 12037, Apr. 8, 1992]

§ 241.260 Definitions.

All of the definitions contained in § 241.1 shall apply to this subpart. In ad-

dition, the term *contract of insurance*, as used in this subpart, means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative, and includes the provisions of this subpart and of the National Housing Act.

§ 241.261 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to multifamily loans insured under this subpart.

[80 FR 51469, Aug. 25, 2015]

§ 241.265 Insurance of property against flood.

The mortgaged property shall be insured against flood as stipulated by the Federal Housing Commissioner. The mortgagee shall obtain such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of mortgage insurance may be terminated at the election of the Commissioner.

[39 FR 26023, July 16, 1974]

§ 241.270 Refund upon termination of insurance.

Upon termination of the insurance contract by payment in full or by voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (a) the date of the prepayment or (b) the effective date of the voluntary termination of the contract of insurance.

§ 241.275 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

Subpart C—Eligibility Requirements—Supplemental Loans To Finance Purchase and Installation of Energy Conserving Improvements, Solar Energy Systems, and Individual Utility Meters in Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

SOURCE: 45 FR 57983, Aug. 29, 1980, unless otherwise noted.

§ 241.500 Definitions.

In addition to the definitions contained in subpart A of this part, incorporated herein by reference, except § 241.1(f), (h) and (i), the following terms, as used in § 241.500 *et seq.*, shall have the meaning indicated:

(a) *Approved lender* means a financial institution or other mortgagee approved by the Commissioner as eligible for insurance under section 2 of the National Housing Act, or a mortgagee approved under section 203(b)(1) of the National Housing Act, or a state housing agency approved pursuant to 24 CFR 883.102.

(b) *Borrower* means the owner of a project held in fee simple or of a leasehold interest which is not now covered by a mortgage insured or held by the Secretary.

(c) *Energy saving loan* means any form of secured obligation used in connection with the purchase and installation of energy conserving improvements.

(d) *Multifamily project* means a project which consists of not less than five dwelling units on one site, each such unit providing complete living facilities including provisions for cooking, eating, and sanitation within the unit and which is not now covered by a mortgage insured or held by the Secretary.

FEEs AND CHARGES

§ 241.505 Processing of applications and required fees.

(a) *Preapplication conference.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to

submission of an initial application for a firm commitment for insurance of an energy savings improvement loan on a project. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. 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.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of \$5 per thousand dollars of the requested loan amount to be insured.

(c) *Cross-reference.* The provisions of paragraphs (e) (Inspection fee), (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to applications submitted under subpart E of this part.

[61 FR 14416, Apr. 1, 1996]

§ 241.510 Commitments.

(a) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(b) *Types of firm commitment.* (1) Where the amount of the loan is \$250,000 or more, the firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(2) Where the amount of the loan is less than \$250,000, the firm commitment shall provide for insurance of the loan after completion of the improvements.

(c) *Term of commitment.* (1) A firm commitment to insure advances shall be effective for a period of not more than 60 days from the day of issuance.

(2) A firm commitment to insure upon completion shall be effective for a

designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(3) The term of a firm commitment may be extended in such a manner as the Commissioner may prescribe.

[61 FR 14417, Apr. 1, 1996]

§ 241.515 Inspection fee.

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:

(a) If the case involves the insurance of advances, it shall be paid at the time of initial endorsement.

(b) If the case involves insurance upon completion, it shall be paid prior to the date construction is begun.

§ 241.520 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* 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 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 \$3 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 time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorse-

ment, for an increase in the amount of the loan, either by amendment or by substitution of a new loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate \$3 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 \$5 per thousand dollars of the amount of the increase requested.

§ 241.525 Refund of fees.

If the amount of the commitment issued or an increase in loan prior to endorsement 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 fees 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 the installation of energy conserving improvements for 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.

§ 241.530 Maximum fees and charges by lender.

The lender may collect from the borrower the amount of the fees provided for in this subpart. The lender may also collect from the borrower an initial service charge in an amount not to exceed 2 percent of the original principal amount of the loan to reimburse the lender for the cost of originating and closing the transaction. Any additional charges shall be subject to the prior approval of the Commissioner.

§ 241.530a

ELIGIBLE SECURITY INSTRUMENTS

§ 241.530a Note and security form.

The lender shall present for insurance a note and security instrument, on forms approved by the Commissioner for use in the jurisdiction in which the property to be improved is located.

[45 FR 57983, Aug. 29, 1980, as amended at 45 FR 80276, Dec. 4, 1980]

§ 241.535 Loan multiples—minimum principal.

The loan shall involve a principal obligation in multiples of \$100, and the minimum principal obligation shall be \$10,000.

§ 241.540 Method of loan payment and amortization period.

(a) *Monthly payments.* The loan shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payment in accordance with the amortization plan as agreed upon by the borrower, the lender and the Commissioner.

(b) *Amortization period.* (1) The loan shall have an amortization of either 5, 10, or 15 years by providing for either 60, 120, or 180 monthly amortization payments. No energy saving loan shall have an amortization period in excess of 15 years unless the amount of the loan exceeds \$50,000.00, in which event the amortization period may be increased to 20 years, with a provision for 240 monthly amortization payments.

(2) In any event, the loan shall have a maturity satisfactory to the Commissioner of not less than 2 or more than 20 years from the date of the beginning of amortization, or the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

(3) The Commissioner shall establish the date of the first payment to principal, which shall be no later than the first day of the second month following the date of final endorsement (for projects involving insurance of advances) or endorsement (for projects involving insurance upon completion) of the loan for insurance.

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§ 241.545 Covenant against liens.

The security instrument shall contain a covenant against the creation by the borrower of additional liens against the property superior or inferior to the lien of such instrument, except with the prior approval of the Commissioner.

§ 241.550 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date, the next annual insurance premium payable by the lender to the Commissioner.

§ 241.555 Security instrument and lien.

(a) The security instrument shall cover the entire property included in the project, shall be a lien on the real property of the project under the laws of the jurisdiction in which the project is located, and may be junior to such prior liens or mortgage indebtedness as the Commissioner may approve. The security instrument shall contain a provision that a default under the first mortgage is a default under the supplementary loan security instrument.

(b) For bond-financed projects where the bond resolution contains a provision prohibiting the creation of additional liens, the Commissioner may accept at his/her option:

(1) A first lien on another property whose fair market value as determined by the Commissioner equals or exceeds the amount of the loan insured under this part;

(2) A Collateral Account in an amount not less than the amount of the loan insured under this part funded with cash or negotiable bonds or securities backed by the full faith and credit of the United States Government; or

(3) Other security acceptable to the Commissioner.

§ 241.560 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the lender and the borrower.

(b) Interest shall be payable in monthly installments on the principal

amount of the loan outstanding on the due date of each installment.

[45 FR 57983, Aug. 29, 1980, as amended at 49 FR 19459, May 8, 1984]

§ 241.565 Maximum loan amount.

The principal amount of the loan shall in no event exceed the cost of the energy conserving improvements including the purchase thereof, cost of installation, architect's fees, interest during construction and such other miscellaneous fees and charges incident to construction as determined by the Commissioner. Nor shall the principal amount of the loan exceed the lesser of the following:

(a) An amount which can be supported by residual income, which is the amount of net income remaining after payment of all existing debt service requirements and deduction of proprietary earnings, as determined by the Commissioner. The computation of net income shall take into account the amount which will be saved in operating costs over the period of repayment of the loan as a result of the installation of the energy conserving improvements.

(b) An amount which, when added to the existing outstanding indebtedness, does not exceed the Commissioner's estimate of the value of the project after the energy conserving improvements are installed.

§ 241.570 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his/her 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 complied with to the satisfaction of the Commissioner, he/she shall indicate on the original credit instrument the total approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the mortgagee or lender shall be bound by the provisions of this subpart to the same extent as if they

had executed a contract including the provisions of this subpart and the applicable sections of the Act.

(d) *Insurance upon completion.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, he/she shall indicate the total approved for insurance and endorse the credit instrument, identifying the date of insurance.

§ 241.580 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and this aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute an event of default and the loan shall further provide for a grace period of 30 days within which time the default must be cured.

§ 241.585 Prepayment privileges and prepayment charge.

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice and it may contain a provision, with the approval of the Commissioner, for a reasonable charge in the event of prepayment. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without an additional charge. A provision for a charge in the event of prepayment may not be included in a loan of \$200,000 or less.

§ 241.586 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan insured

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under this subpart, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

[53 FR 8886, Mar. 18, 1988]

PROPERTY REQUIREMENTS

§ 241.590 Eligibility of property.

(a) A loan to be eligible for insurance shall be on real estate held:

- (1) In fee simple; or
- (2) On the interest of the lessee under a lease for not less than seventy-five years which is renewable; or
- (3) Under a lease having a period of not less than twenty-five years to run from the date the loan is executed.

(b) The property constituting security for the loan transaction must be held by an eligible borrower as herein defined and must at the time the loan is insured be free and clear of all liens other than those specifically approved by the Commissioner.

TITLE

§ 241.595 Eligibility of title.

In order for the property which is to be the security for a loan to be insured under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.600 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a survey, satisfactory to the Commissioner, and a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraph (a) (2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commis-

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sioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project where the loan does not exceed \$200,000.

[45 FR 57983, Aug. 29, 1980, as amended at 58 FR 34217, June 24, 1993]

FORM OF CONTRACT

§ 241.605 Contract requirements.

(a) When the principal amount of the loan is \$100,000 or less, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) The contract between the borrower and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of the energy conserving improvements, their installation, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary. A lump

sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowances for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed the upset price as approved by the Commissioner.

(2) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interest of the borrower or the Commissioner.

(b) When the principal amount of the loan is over \$100,000, the form of contract between the borrower and the contractor shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that there is no identity of interest between the borrower or any of the officers, directors or stockholders of the borrower and the contractor, there may be used a lump sum contract providing for payment of the specified amount.

(2) *Cost plus fixed fee contract.* (i) If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and the contractor, the form of contract shall provide for payment of the actual cost of construction not to exceed an upset price and may provide for payment of a fixed fee not exceeding a reasonable allowance as established by the Commissioner in accordance with customary practices in the area.

(ii) In any case where the borrower is a nonprofit entity, a cost plus fixed fee contract shall be used unless it is established to the Commissioner's satisfaction that such form of contract is not required to protect his/her interests and the interests of the borrower, in which case, a lump sum form of contract may be used.

§ 241.610 Assurance of completion.

(a) The borrower shall furnish assurance of completion of the project in the following minimum forms and amounts:

(1) Where the estimated cost of construction of the improvements is \$500,000 or less, the borrower shall furnish assurance of completion of the project in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners of the entity acting as general contractor.

(2) Where the estimated cost of construction of the improvements is more than \$500,000 or where such cost is less than \$500,000 and a personal indemnity agreement is not executed, the assurance shall be in the form of corporate surety bonds for payment and performance, each in the minimum amount of 25 percent of the construction contract, or a completion assurance agreement secured by a cash deposit in the minimum amount of 15 percent of the amount of the construction contract.

(3) All types of assurance of completion shall be on forms approved by the Commissioner. Any surety company executing a bond and any party executing a personal indemnity agreement must be satisfactory to the Commissioner.

(4) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements of this section.

(b) The lender may accept, in lieu of a cash deposit required by paragraph (a) of this section, an unconditional irrevocable letter of credit issued to the lender by a banking institution. In the event a demand under the letter of credit is not immediately met, the lender shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 241.615 Certification of cost requirements.

(a) *Certification agreement.* The lender shall submit with the application an agreement on a form prescribed by the Commissioner and executed by the borrower and the lender.

(b) *Certificate and adjustment.* No loan shall be insured unless:

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(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(c) *Cost computation.* The term *actual cost of the improvements* shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expenses approved by the Commissioner.

(d) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) *Incontestability.* Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) *Records.* The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the contractor to keep similar records and, upon request by the Commissioner, both shall make available for examination such records, including any collateral agreements.

(g) *Certificate of public accountant.* Where required by the Commissioner, each certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or prior to December 31, 1970, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with gen-

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erally accepted auditing standards to the extent deemed necessary to verify the actual costs.

ELIGIBLE BORROWERS

§ 241.625 Eligible borrowers.

In order to be eligible as a borrower under this subpart, the applicant shall be a profit, limited distribution, non-profit, or cooperative owner of a multifamily housing project which is not covered by a mortgage insured or held by the Secretary and which the Commissioner has determined to be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss of the Federal Government.

§ 241.626 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39696, Sept. 27, 1989]

SPECIAL REQUIREMENTS

§ 241.630 Maximum insurance against loss.

A loan insured under this subpart shall be insured for 90 percent of any loss incurred by the person holding the note for the loan.

§ 241.635 Regulatory agreement.

Any borrower obligated on the note for any loan insured under this subpart shall be regulated or restricted in a manner and on a form prescribed by the Secretary as to rents or sales, charges, capital structure, rate of return and methods of operation of the multifamily project to such an extent and in such manner as to provide reasonable rental to tenants and a reasonable return on the investment until the termination of all obligations of the Secretary under the contract of insurance.

§ 241.640 Employment discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, familial status, disability, age, or national origin.

[61 FR 14417, Apr. 1, 1996]

§ 241.645 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor set forth in §§ 5.1 through 5.12 of title 29.

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6(b) of title 29.

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest, was on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to the provision of the Secretary of Labor set forth in §§ 5.1 through 5.12 of title 29.

(d) No advance under any mortgage shall be eligible for insurance unless there is filed with the application of such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved, have been

paid not less than the wage prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to beginning of construction and after the date of filing of the application for insurance.

(e) Compliance with the provisions of this subsection shall be evidenced at such time and in such manner as the Commissioner may prescribe.

Subpart D—Contract Rights and Obligations—Multifamily Projects Without a HUD-Insured or HUD-Held Mortgage

SOURCE: 45 FR 57987, Aug. 29, 1980, unless otherwise noted.

§ 241.800 Definitions.

All of the definitions contained in § 241.500 shall apply to this subpart. In addition, as used in this subpart, the following terms shall have the meaning indicated:

(a) *Contract of insurance* means the agreement evidenced by the endorsement of the Commissioner upon the note given in connection with an insured loan and includes the provisions of this subpart and the applicable provisions of the Act.

(b) *Maturity* means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan.

PREMIUMS

§ 241.805 Insurance premiums.

(a) *First premium*. The lender, upon the endorsement of the loan for insurance, shall pay to the Commissioner a first loan insurance premium equal to one percent of the original face amount of the note.

(b) *Second premium*. The lender, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the loan for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the sum of one percent per annum of

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the average outstanding principal obligation of the loan for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) *Annual insurance premium.* Until the note is paid in full, or until the loan is assigned to the Commissioner, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender, on each anniversary of the date of the first principal payment shall pay an annual loan insurance premium equal to one percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) *Method of premium payment.* Premiums shall be payable in cash or in debentures of the General Insurance Fund at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as provided in this part.

(e) *Calculation of premiums.* The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

§ 241.805a Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

§ 241.815 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if the loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment, or 30 days prior to the Commissioner's receipt of the prepayment notice, whichever is later.

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(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the borrower and the lender for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

§ 241.825 Pro rata refund of insurance premium.

Upon termination of a loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the lender for the account of the borrower an amount equal to the pro rata portion of the current annual loan insurance premium theretofore paid which is applicable to the portion of the year subsequent to the effective date of the termination.

RIGHTS AND DUTIES OF LENDER UNDER THE CONTRACT OF INSURANCE

§ 241.830 Definition of default.

(a) If the borrower fails to make any payments due under or provided to be paid by the terms of the note or security instrument, the note shall be considered in default for the purposes of this subpart.

(b) The failure to perform any other covenant under the note or security instrument shall be considered a default: *Provided*, The lender, because of such default, has exercised its rights under the note or security instrument and accelerated the debt.

(c) The failure to make any payment or to perform any covenant under the first conventional note and mortgage by reason of which the holder thereof declares a default as evidenced by formal written declaration of said default to the Commissioner and the lender by the holder of the first note and mortgage, shall be considered a default under the insured loan.

(d) If such defaults as defined in paragraphs (a), (b), and (c) of this section continue for a period of 30 days, the

lender shall be entitled to receive the benefits of insurance hereinafter provided.

§ 241.840 Date of default.

In computing loan insurance benefits, the date of default shall be considered as:

(a) The date of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the note or security instrument; or

(b) The date of the first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

(c) The date of the lender's acceleration of the debt because of the borrower's default under the first conventional note and mortgage.

§ 241.850 Notice of default.

(a) If the default is not cured within the 30 day grace period, as defined in § 241.530(d), the lender shall, within 30 days thereafter, notify the Commissioner in writing of such default.

(b) The lender shall give notice in writing to the Commissioner of the failure of the borrower to comply with any covenant or obligation under the security instrument or note regardless of the fact that the lender may not have elected to accelerate the debt.

§ 241.860 Commissioner's right to require acceleration.

Upon receipt of notice of the failure of the borrower to comply with any covenant or obligation under the security instrument or note, or under the conventional note and mortgage, the Commissioner may require the lender to accelerate payment of the outstanding principal balance due.

§ 241.865 Election by the lender.

Where a real estate mortgage, or other security instrument has been used to secure the payment of a loan made under the provisions of this subpart and subpart C of this part, the lender may either elect to assign the loan to the Commissioner in exchange for the payment of insurance benefits or may exercise its rights under the

note and security instrument in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Commissioner shall be so notified and the contract of insurance shall be deemed terminated upon the date of receipt of such notification.

§ 241.875 Maximum claim period.

Notice of intention to file claim on a form prescribed by the Commissioner shall be filed within 45 days after the lender becomes eligible for the benefits of the loan insurance, or within such later time as may be agreed upon by the Commissioner in writing.

§ 241.880 Items to be delivered on submitting claim.

Within 30 days after the filing of the notice of intention to assign the loan to the Commissioner, or within such further period as may be agreed upon by the Commissioner in writing, the lender shall deliver to the Commissioner:

(a) The fiscal data pertaining to the loan transactions;

(b) Receipts covering all disbursements as required by the fiscal data form;

(c) The original note and any security instrument or instruments which shall be assigned to the Commissioner without recourse or warranty, except that the lender must warrant that no act or omission of the lender has impaired the validity and priority of such security instrument or instruments that the security instrument or instruments are prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such security instrument or instruments regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such security instrument or instruments, except such liens or other matters as may be approved by the Commissioner, that the amount stated in the instrument of assignment is actually due and owing under the security instrument or instruments, that there are no offsets or counterclaims thereto, and that the lender has a good

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right to assign such note and security instrument or instruments;

(d) The assignment to the Commissioner of all rights and interests arising under the note and security instrument or instruments so in default and all claims of the lender against the borrower or others arising out of the loan transaction;

(e) All policies of title or other insurance or surety bonds, or other guarantees and any and all claims thereunder; including evidence satisfactory to the Commissioner that the original title coverage has been extended to include the assignment of the note and security instrument or instruments to the Commissioner;

(f) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;

(g) Any additional information or data which the Commissioner may require;

(h) The following cash items, held in connection with the loan insured under this subpart, shall either be retained by the lender or delivered to the Commissioner at the time the insurance claim is filed.

(1) Any cash held by the lender or its agents or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal the loan indebtedness.

(2) All funds held by the lender for the account of the borrower received pursuant to any other agreement.

(i) On the date the assignment of the note and security instrument or instruments are filed for record, the lender shall notify the Commissioner and the Office of Finance and Accounting by telegram of such recordation.

§ 241.885 Insurance benefits.

(a) *Method of payment.* Payment of insurance claims shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(b) *Amount of payment.* Upon acceptable assignment of the note and security instrument to the Commissioner, the insurance benefits shall be paid in an amount equal to 90 percent of the amount determined as follows:

(1) By adding to the unpaid principal amount of the loan, computed as of the date of default, the following items:

(i) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.

(ii) Any advances approved by the Commissioner made previously by the lender under the provisions of the note or security instrument or instruments.

(iii) Reimbursements for such reasonable collection costs, court costs, and attorney's fees as may be approved by the Commissioner.

(iv) Any loan insurance premiums paid after default.

(v) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned thereon, as of the date such cash payment is made, except when the lender fails to meet any one of the applicable requirements of §§ 241.850, 241.875, and 241.880, within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section the following items:

(i) Any amount received by the lender on account of the loan after the date of default.

(ii) Any net income received by the lender from the property covered by the note or security instrument and not applied to prior debts held by the lender.

(iii) The sum of the cash items retained by the lender pursuant to § 241.880(h) (1) and (2).

[45 FR 57987, Aug. 29, 1980, as amended at 80 FR 51469, Aug. 25, 2015]

§ 241.890 Characteristics of debentures.

Debentures issued in settlement of insurance claims under this subpart shall have the same characteristics and the same requirements for registration and redemption as those issued pursuant to subpart B of this part except that debentures shall bear interest at the rate in effect as of the date the

commitment was issued, or as of the date the loan was first endorsed for insurance, whichever rate is higher, and shall mature 10 years from the date of issue which date shall be the date of execution of the assignment of the loan to the Commissioner.

§ 241.893 Cash adjustment.

Any difference of less than \$50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

[59 FR 49817, Sept. 30, 1994]

ASSIGNMENTS

§ 241.895 Assignment of insured loans.

(a) An insured loan may be transferred only to a transferee who is a lender approved by the Commissioner. Upon such transfer and the assumption by the transferee of all obligations under the contract of insurance the transferor shall be released from its obligations under the contract of insurance.

(b) The contract of insurance shall terminate with respect to loans described in paragraph (a) of this section upon the happening of either of the following events:

(1) The transfer or pledge of the insured loan to any person, firm or corporation, public or private, other than an approved lender.

(2) The disposal by a lender of any partial interest in the insured loan to other than an approved lender.

EXTENSION OF TIME

§ 241.897 Actions to be taken by lender.

With respect to any action required of the lender within a period of time prescribed by this subpart, the Commissioner may extend such period.

RIGHTS IN HOUSING FUND

§ 241.900 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the General Insurance Fund.

§ 241.905 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time in whole or in part, but such amendment shall not adversely affect the interests of a lender under the contract of insurance on any loan already insured and shall not adversely affect the interests of a lender on any loan to be insured on which the Commissioner has made a commitment to insure.

Subpart E—Insurance for Equity Loans and Acquisition Loans—Eligibility Requirements

SOURCE: 57 FR 12037, Apr. 8, 1992, unless otherwise noted.

§ 241.1000 Purpose and scope.

(a) Section 231 of the Emergency Low Income Housing Preservation Act of 1989 ("ELIHPA") amended the National Housing Act by adding a new subsection (f) to section 241. This section authorizes the Secretary to provide insurance for an equity loan as a vehicle for the owner of an eligible multi-family project to capture a portion of the project's equity, in connection with a plan of action approved by the Commissioner under ELIHPA.

(b) Section 602 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA") amended section 241 by expanding its scope to include both equity loans for owners, and acquisition loans for purchasers, under a plan of action approved under the provisions of the 1990 Act, and by making other changes. The provisions of section 241(f) as amended by LIHPRHA are applicable to owners with plans of action being processed under part 248, subpart B of this chapter, which implements LIHPRHA.

(c) The provisions of section 241(f) of the Act as they were in effect prior to LIHPRHA remain in effect for owners with plans of action being processed under part 248, subpart C of this chapter, which implements ELIHPA.

(d) The insurance of an equity loan or acquisition loan under subpart E of this part may be provided only as a

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specific element of a plan of action approved by the Commissioner under part 248 of this chapter and is not available under any other departmental program.

(e) Unless otherwise indicated, the provisions of subparts E and F of this part are applicable to loans insured in connection with plans of action being processed under either subpart B or C of part 248 of this chapter.

(f) An owner or purchaser may obtain both a rehabilitation loan under subpart A of this part and an equity loan or acquisition loan under subpart E of this part.

§ 241.1005 Definitions.

(a) All of the definitions of § 241.1 apply to equity and acquisition loans insured under subpart E of this part except the following definitions:

§ 241.1(i)—Borrower;

§ 241.1(k)—Energy conserving improvements;

§ 241.1(1)—Solar energy system.

(b) As used in subpart E of this part, the following terms have the meaning indicated:

Acquisition loan means a loan or advance of credit made to a purchaser of eligible low income housing which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Borrower means the owner or qualified purchaser of an eligible low income housing project, which owner receives and becomes primarily obligated for the repayment of an equity loan. With respect to loans insured in connection with a plan of action under part 248, subpart C of this chapter, the term includes a public entity, a non-profit organization or a limited equity cooperative, which entity is purchasing an eligible low income housing project by means of an equity loan and is obligated for the payment of the equity loan.

Eligible low income housing has the same meaning as provided at § 248.101 or § 248.201 of this chapter, with respect to loans insured in connection with plans of action under subparts B or C of part 248 of this chapter.

Equity means, for purpose of subparts E and F of this part only, the difference between the fair market value

of the project as determined by the Commissioner and the outstanding indebtedness relating to the property.

Equity Loan means a loan or advance of credit to the owner of an eligible low income housing project which is made for the purpose of implementing a plan of action approved in accordance with part 248 of this chapter.

Extension preservation equity has the same meaning as provided at § 248.101 of this chapter.

Limited equity cooperative means a tenant cooperative corporation which, in a manner acceptable to the Commissioner, restricts the initial and resale price of the shares of stock in the cooperative corporation so that the shares remain affordable to low-income families and moderate income families.

Low-income families has the same meaning as provided at § 248.101 of this chapter.

Moderate income families has the same meaning as provided at § 248.101 of this chapter.

Plan of action has the same meaning as provided at § 248.101 or § 248.201 of this chapter.

Preservation equity has the same meaning as provided at § 248.101 of this chapter.

Priority purchaser has the same meaning as provided at § 248.101 of this chapter.

Qualified Purchaser has the same meaning as provided at § 248.101 of this chapter.

§ 241.1010 Feasibility letter.

(a) *Request for study.* The owner may request the Commissioner to undertake a feasibility analysis of an equity or acquisition loan, and issue a feasibility letter. At the discretion of the Commissioner the feasibility analysis may be undertaken or denied.

(b) *Findings.* The issuance of a feasibility letter indicates completion of the Commissioner's preliminary analysis for the insurance of an equity or acquisition loan. The feasibility letter shall contain the Commissioner's estimate of the supportable loan amount, based upon the project's equity in the case of an equity loan and based on the project's purchase price in the case of an acquisition loan, but such feasibility letter shall neither constitute a

commitment to insure nor bind the Commissioner in any other manner.

(c) *Fee.* The Commissioner shall not charge a fee for undertaking a feasibility analysis or for the issuance of a feasibility letter.

§ 241.1015 Processing of applications and required fees.

(a) *Application.* An application for the issuance of a firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Commitment fees.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee of \$5.00 per thousand dollars of the requested loan amount to be insured.

[61 FR 14417, Apr. 1, 1996]

§ 241.1020 Commitments.

(a) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of the equity or acquisition loan immediately upon endorsement of the note.

(b) *Term of commitment.* (1) A firm commitment is effective for whatever term is specified in the text of the commitment.

(2) The term of a firm commitment may be extended in such manner as the Commissioner may prescribe.

(c) *Reopening of expired commitments.* An expired firm 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.

[61 FR 14417, Apr. 1, 1996]

§ 241.1025 Refund of fees.

If the amount of the commitment issued 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 fees or any portion thereof may be returned to the applicant. Commitment and reopening fees may also be refunded to the applicant, in whole or in part, in such other instances as the Commissioner may determine.

§ 241.1030 Mortgage insurance premiums.

The lender, upon endorsement of the note, shall pay the Commissioner a first mortgage insurance premium equal to 0.5 percent of the original face amount of the equity or acquisition loan.

(a) If the date of the first principal payment is more than one year following the date of endorsement, the lender upon each anniversary of such endorsement date, shall pay a premium equal to 0.5 percent of the original face amount of the loan. On the date of the first principal payment, the lender shall pay another premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of said premiums shall equal the sum of:

(1) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of endorsement; and

(2) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the first anniversary of the date of endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year or less than one

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year following the date of endorsement, the lender, upon such first principal payment date, shall pay a second premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) 0.5 percent per annum of the average outstanding principal obligation of the loan for the period from the date of endorsement to the date of the first principal payment; and

(2) 0.5 percent of the average outstanding principal obligation of the loan for the year following the date of the first payment following the date of the first principal payment.

(c) Until the equity or acquisition loan is paid in full or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the lender on each anniversary date of the first principal payment, shall pay an annual insurance premium equal to 0.5 percent of the average outstanding principal obligation of the loan for the year following the date on which such premium becomes payable.

(d) The premiums payable on or after the date of the first principal payment shall be calculated in accordance with the amortizing provisions without taking into account delinquent payments or prepayments.

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in subpart E of this part.

§ 241.1035 Charges by lender.

(a) The lender may collect from the borrower the amount of the fees provided for by subpart E of this part.

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in an amount not to exceed 2 percent of the original principal amount of the loan.

(c) Any charges to be collected by the lender in addition to those prescribed

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in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.1040 Eligible lenders.

Lenders approved as mortgagees under §§ 202.6, 202.7 or 202.9 of this chapter are eligible for insurance of equity loans under this subpart.

[62 FR 20088, Apr. 24, 1997]

§ 241.1045 Note and security form.

The lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property is located, which shall not be changed without the prior approval of the Commissioner. The security instrument shall provide for accelerated repayment at the request of the Commissioner pursuant to § 241.1046(b).

§ 241.1046 Rental assistance.

(a) When underwriting an equity or acquisition loan under subpart E of this part, the Commissioner may assume that the rental assistance provided in accordance with a plan of action approved under subparts B or C of part 248 of this chapter will be extended for the full term of the contract entered into under the plan of action.

(b) In the event that rental assistance is not extended under part 248 of this chapter, or the Commissioner is unable to develop a revised package of incentives to the owner comparable to those received under the original approved plan of action, the Commissioner may require the mortgagee to accelerate the debt of the equity or acquisition loan.

(c) If the Commissioner is unable to extend the term of rental assistance for the full term of the contract entered into under part 248 of this chapter, the Commissioner is authorized to take such actions as the Commissioner deems appropriate to avoid default, avoid disruption of the sound ownership and management of the property or otherwise minimize the cost to the Federal Government.

§ 241.1050 Method of loan payment.

The loan shall provide for monthly payments on the first day of each

month on account of interest and principal and shall provide for payments in accordance with the amortization plan as agreed upon by the borrower, the lender, and the Commissioner.

§ 241.1055 Date of first payment to principal.

The date for first payment to principal shall be established by the Commissioner.

§ 241.1060 Maturity.

(a) Equity loans shall have a term not to exceed 40 years; and

(b) Acquisition loans shall have a term of 40 years.

[58 FR 37814, July 13, 1993]

§ 241.1065 Maximum loan amount—loans insured in connection with a plan of action under subpart C of part 248 of this chapter.

The amount of the equity loan shall not exceed ninety percent of the owner's equity in the project, as determined by the Commissioner. Notwithstanding the above, the equity loan shall not exceed an amount which, when added to the existing indebtedness on the property, can be supported by 90 percent of the projected net operating income of the project, as determined by the Commissioner. The Commissioner, in making a determination regarding the amount of an equity loan and sums available to service said loan, shall take into account the fact that the project's income may increase within the limits established by § 248.233(d) of this chapter.

§ 241.1067 Maximum loan amount—loans insured in connection with a plan of action under subpart B of part 248 of this chapter.

(a) The amount of the equity loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) The lesser of 70 percent of the extension preservation equity of the project; or

(3) The amount the Commissioner determines can be supported by the project on the basis of an 8 percent return on extension preservation equity, assuming normal debt service cov-

erage. To the extent practicable, equity loans shall have amortization provisions which will support the maximum loan amount authorized under this section.

(b) The amount of the acquisition loan shall not exceed:

(1) The amount of rehabilitation costs as determined under an approved plan of action and related charges; plus

(2) Ninety-five percent of the transfer preservation equity of the project; and

(3) If the purchaser is a priority purchaser, the loan may include any expenses associated with the acquisition, loan closing, and implementation of the plan of action, subject to the approval of the Commissioner.

[58 FR 37814, July 13, 1993]

§ 241.1068 Renegotiation of an equity loan.

The Commissioner shall renegotiate and modify the terms of an equity loan insured under this subpart at the request of the owner of the project for which a loan closing occurred if—

(a) The loan closing occurred between September 28, 1992 and January 26, 1993;

(b) The loan was made pursuant to a plan of action submitted under subpart C of part 248 of this chapter; and

(c) The plan of action was accepted by the Commissioner for processing in December 1991.

[58 FR 37814, July 13, 1993]

§ 241.1069 Escrow requirements.

(a) An equity loan provided in connection with a plan of action under subpart B of part 248 of this chapter shall provide for the lender to deposit, on behalf of the borrower, 10 percent of the loan amount in an escrow account, controlled by the Commissioner or a State housing finance agency approved by the Commissioner, which shall be made available to the borrower upon the expiration of the 5-year period beginning on the date the loan is made, subject to compliance with § 248.147 of this chapter.

(b) An equity loan provided in connection with a plan of action under either subpart B or subpart C of part 248 of this chapter shall provide for the lender to phase in advances to reflect project rent levels.

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§ 241.1070 Agreed interest rate.

The equity or acquisition loan shall bear interest at the rate agreed upon by the borrower and the lender.

§ 241.1080 Eligibility of title.

In order for the project to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 241.1085 Title evidence.

(a) Upon insurance of the loan, the lender shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a)(1) of this section. If the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender shall furnish such evidence of title as provided in paragraphs (a)(2), (3) or (4) of this section as the Commissioner may require. Any policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The acceptable types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles;

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(3) A Torrens or similar title certification; or

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or territory thereof.

[57 FR 12037, Apr. 8, 1992, as amended at 58 FR 34217, June 24, 1993]

§ 241.1090 Accumulation of next premium.

The security instrument shall provide for payments by the borrower to the lender on each interest payment date of an amount sufficient to accumulate in the hands of the lender one payment period prior to its due date the next annual insurance premium payable by the lender to the Commissioner. These payments shall continue only as long as the contract of insurance remains in effect.

§ 241.1095 Application of payments.

(a) The security instrument shall provide that all monthly payments to be made by the borrower shall be added together and the aggregate amount shall be paid by the borrower upon each monthly payment date in a single payment. The lender shall apply the payment in the following order:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any monthly payments required under paragraph (a) of this section shall constitute a default. The security instrument shall provide for a grace period of 30 days within which time the default must be cured.

§ 241.1100 Prepayment privilege and charges.

(a) *Prepayment privilege.* (1) Except as otherwise provided in paragraph (b) of this section, the security instrument shall contain a provision permitting the borrower to prepay the loan, in whole or in part, upon any interest payment date after giving to the lender 30 days advance notice of its intention to prepay.

(2) If the loan exceeds \$200,000, the security instrument may contain a provision for an additional charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. These charges shall not be imposed if the loan is accelerated at the request of the Commissioner, pursuant to § 241.1046(b). The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for an additional charge in the event of prepayment may not be included in a loan of \$200,000 or less.

(b) *Prepayment of bond-financed loan.* Where the lender has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the loan may contain a prepayment restriction and prepayment penalty charges acceptable to the Commissioner as to term, amount, and conditions.

§ 241.1105 Late charges.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents 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 borrower and shall not be deducted from any aggregate monthly payment.

§ 241.1120 Mortgagee's consent.

The holder of an insured mortgage which is recorded prior to the equity or acquisition loan shall not withhold its consent to the equity or acquisition loan (whether or not such equity or acquisition loan is insured by the Commissioner) or the security instrument executed in connection therewith, and may not charge a fee as a condition to its consent to such loan or security instrument.

Subpart F—Insurance for Equity Loans and Acquisition Loans—Contract Rights and Obligations

SOURCE: 57 FR 12040, Apr. 8, 1992, unless otherwise noted.

§ 241.1200 Cross-references.

(a) *Projects with a HUD-insured or HUD-held mortgage.* (1) All the provisions of part 207, subpart B of this chapter, covering mortgages insured under section 207 of the Act, apply to equity loans or acquisition loans on a project insured under section 241(f) of the Act, except the following provisions:

Sec.

207.251 Definitions.

207.252 First, second and third premium.

207.252a Premiums—operating loss loans.

207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.

207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.

207.254 Insurance endorsement.

(2) For the purposes of subpart F of this part, all references in part 207 of this chapter to section 207 of the Act and to the term "mortgage" shall be construed to refer to section 241(f) of the Act and "equity or acquisition loan," respectively.

(b) *Projects without a HUD-insured or HUD-held mortgage.* The provisions of subpart D of this part shall be applicable to a project without a HUD-insured or HUD-held mortgage that is receiving an equity loan or acquisition loan under subpart E of this part in connection with a plan of action approved by the Commissioner under part 248 of this chapter.

(c) All of the definitions in § 241.1005 apply to subpart F of this part. In addition, as used in subpart F of this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of subpart F of this part and of the Act.

§ 241.1205 Payment of insurance benefits.

All the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to an equity or acquisition

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loan insured under subpart F of this part.

[80 FR 51469, Aug. 25, 2015]

§ 241.1210 Condition for payment of insurance benefits.

(a) All of the provisions of § 207.258 of this chapter apply to subpart F of this part, except that, if the holder of the senior insured mortgage institutes a foreclosure action, the lender shall notify the Commissioner in a timely manner of such action. The Commissioner, at its option, may then direct the lender to assign the equity or acquisition loan to the Commissioner, or bid an amount necessary to acquire the project and convey the project to the Commissioner.

(b) If the equity loan or acquisition loan is assigned in accordance with this section, the Commissioner at a foreclosure sale may bid, in addition to amounts otherwise authorized, any sum not in excess of the aggregate unpaid indebtedness secured by the senior insured mortgage and equity or acquisition loan, plus taxes, insurance, foreclosure costs, fees and other expenses.

§ 241.1215 Calculation of insurance benefits.

All of the provisions of § 207.259 of this chapter apply to subpart F of this part, except that if the lender, at the direction of the Commissioner, acquires title to the project at a foreclosure sale instituted by the holder of the senior insured mortgage, the amount of the claim determined under § 207.259(c) of this chapter shall also include an amount bid by the lender to satisfy the senior insured mortgage at the foreclosure sale.

§ 241.1220 Termination of insurance benefits.

All of the provisions of § 207.253a of this chapter apply to subpart F of this part, except that the following shall also constitute grounds for terminating the contract of insurance:

(a) The failure of the lender to notify the Commissioner in a timely manner of a foreclosure action initiated by the holder of the senior insured mortgage; and

(b) The failure of the lender when directed by the Commissioner to assign

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the equity or acquisition loan or bid an amount necessary to acquire title to the project and convey the project to the Commissioner, in accordance with § 241.1210.

§ 241.1230 No vested right in fund.

Neither the lender nor the borrower shall have any vested or other right in the insurance fund under which the loan is insured.

§ 241.1235 Cross default.

In the event the borrower commits a default under a prior recorded insured mortgage and the holder thereof initiates a foreclosure proceeding, said default under the prior recorded insured mortgage shall constitute a default under the equity or acquisition loan.

§ 241.1245 Insurance endorsement.

(a) *Endorsement.* The Commissioner shall indicate his insurance of the equity loan or acquisition loan by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the loan is insured and the date of insurance.

(b) *Endorsement of phased loan.* In the event the loan is phased, the Commissioner shall indicate his insurance of each amount by endorsing the original credit instrument and identifying the section of the Act and the regulations under which such amount is insured and the date of the insurance.

(c) *Final advance of phased loan.* When all advances of a phased loan have been made and the terms and conditions of the commitment have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances the Commissioner has approved for insurance and again endorse such instrument.

§ 241.1250 Effect of endorsement.

From the date that the equity or acquisition loan is endorsed, the Commissioner and the lender shall be bound by the provisions of subpart F of this part to the same extent as if they had executed a contract including the provisions of subpart F of this part and the applicable sections of the Act.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—General Eligibility Requirements

- Sec.
- 242.1 Definitions.
 - 242.2 Program financial self-sufficiency.
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 - 242.6 Property requirements.
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- 242.16 Applications.
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- 242.21 Refund of fees.
- 242.22 Maximum fees and charges by mortgagee.
- 242.23 Maximum mortgage amounts and cash equity requirements.
- 242.24 Initial operating costs.

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- 242.25 Mortgage form and disbursement of mortgage proceeds.
- 242.26 Agreed interest rate.
- 242.27 Maturity.
- 242.28 Allowable costs for consultants.
- 242.29 Payment requirements.
- 242.30 Application of payments.
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- 242.42 Certificates of actual cost.
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- 242.44 Construction standards.

- 242.45 Early commencement of work.
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Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements

- 242.56 Form of regulation.
- 242.57 Maintenance of hospital facility.
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- 242.61 Management.
- 242.62 Releases of lien.
- 242.63 Additional indebtedness and leasing.
- 242.64 Current and future property.
- 242.65 Distribution of assets.
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Subpart H—Miscellaneous Requirements

- 242.68 Disclosure and verification of Social Security and Employer Identification Numbers.
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- 242.81 Lead-based paint poisoning prevention.
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- 242.83 Debarment and suspension.
- 242.84 Previous participation and compliance requirements.
- 242.86 Property and mortgage assessment.
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provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 207. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 207, except that any payment will be made in cash instead of debentures.

[59 FR 1475, Jan. 11, 1994]

§ 255.3 Case-by-case conversion to full insurance.

CROSS REFERENCE: The provisions of 24 CFR 251.3 apply to this part.

[61 FR 49038, Sept. 17, 1996]

§ 255.6 Method of payment of mortgage insurance premiums.

The provisions of 24 CFR 251.6 shall apply to this part.

[63 FR 1303, Jan. 8, 1998]

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

Subpart A—General Provisions

Sec.

- 266.1 Purpose and scope.
- 266.5 Definitions.
- 266.10 Allocations of assistance and credit subsidy.
- 266.15 Risk-Sharing Agreement.
- 266.20 Effect of amendments.
- 266.25 Limitation on HUD insurance liability.
- 266.30 Nonapplicability of 24 CFR part 246.

Subpart B—Housing Finance Agency Requirements

- 266.100 Qualified housing finance agency (HFA).
- 266.105 Application requirements.
- 266.110 Reserve requirements.
- 266.115 Program monitoring and evaluation.
- 266.120 Actions for which sanctions may be imposed.
- 266.125 Scope and nature of sanctions.
- 266.130 Reinsurance.

Subpart C—Program Requirements

- 266.200 Eligible projects.
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- 266.210 HUD-retained review functions.

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- 266.220 Nondiscrimination in housing and employment.
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Subpart D—Processing, Development, and Approval

- 266.300 HFAs accepting 50 percent or more of risk.
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- 266.310 Insurance of advances or insurance upon completion; applicability of requirements.
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- 266.400 Property requirements—real estate.
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Subpart F—Project Management and Servicing

- 266.500 General.
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MORTGAGE INSURANCE PREMIUMS

- 266.600 Mortgage insurance premium: Insurance upon completion.
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- 266.606 Mortgage insurance premium: Duration and method of paying.
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- 266.612 Insurance endorsement.

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TERMINATION

- 266.620 Termination of Contract of Insurance.
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CLAIM PROCEDURES

- 266.626 Notice of default and filing an insurance claim.
 266.628 Initial claim payments.
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 266.644 Application for final claim settlement.
 266.646 Determining the amount of loss.
 266.648 Items included in total loss.
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 266.652 Determining share of loss.
 266.654 Final claim settlement and HFA Debenture redemption.
 266.656 Recovery of costs after final claim settlement.
 266.658 Program monitoring and compliance.

AUTHORITY: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

SOURCE: 59 FR 62524, Dec. 5, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 directs the Secretary of the Department of Housing and Urban Development, acting through the Federal Housing Administration, to carry out programs that will demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, “Multifamily Mortgage Credit Demonstrations,” provides new independent insurance authority that is not under the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs the Secretary to carry out a pilot program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD will provide

full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD will direct qualified HFAs regarding their underwriting standards and loan terms and conditions is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this pilot program is to test the effectiveness of providing new forms of credit enhancement for multifamily loans, *i.e.*, utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements should increase access to capital markets and, thereby, increase the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, HUD expects affordable housing to be made available to eligible families and individuals in a timely manner.

§ 266.5 Definitions.

Act means the Housing and Community Development Act of 1992, as amended.

Affordable housing means a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, or in which 40 percent (25 percent in New York City) or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size. A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

Board and Care/Assisted Living Facility means a residential facility for independent living that is regulated by

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State or local government that provides continuous protective oversight and assistance with the activities of daily living to frail elderly persons or other persons needing such assistance. Continuous protective oversight may range from as little as awareness on the part of management staff of residents' whereabouts (and the ability to intervene in the event of crisis) to a higher level of services and assistance. Assistance with the activities of daily living may include, but is not limited to, bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, meal preparation, shopping, supervision of medication, and housework.

Commissioner means the Federal Housing Commissioner or his or her authorized representative.

Contract of insurance means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

Credit subsidy means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in subpart B of title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub.L. 101-508, approved Nov. 5, 1990).

Debenture means the instrument issued by the HFA to HUD upon payment of an insurance claim by HUD. The instrument must be in the standard form of a State or Municipal Debenture issued under the Uniform Commercial Code, where applicable, and must be supported by the full faith and credit of the HFA. The instrument must define the terms and conditions and the risk-sharing portion which the HFA will pay at the end of the term of the Debenture, and must be for the full amount of the claim payment. The term *Debenture* may include similar instruments, such as promissory notes and bonds, as mutually agreed upon by the Commissioner and the HFA.

Designated offices means the HUD Field Offices that are assigned the responsibility for program monitoring, imposing or recommending sanctions

for program violations, and conducting informal hearings.

Firm approval letter means a letter issued by HUD to an HFA upon the positive completion of the HUD-retained reviews described in § 266.210. The letter will apportion units to the project and provide that, so long as the HFA is in good standing and absent fraud or misrepresentation by the HFA, HUD will endorse the project mortgage for insurance upon presentation by the HFA of the required Closing Docket and certifications required by this part and the Commissioner's administrative requirements.

Gross rent includes any utility allowance (including charges for the occupancy of a cooperative unit) determined by the Secretary after taking into account such determination under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). It does not include any payment under section 8 or any comparable rental assistance program (with respect to such unit or occupants thereof), nor does it include any fee for a supportive service that is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of the Code (26 U.S.C. 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. It also does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

Housing finance agency or *HFA* means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia,

Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.

Insured mortgage means a valid single first lien given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instrument, if any, secured thereby. Any other financing permitting on property insured under this part must be expressly subordinate to the insured mortgage.

Level I participants means HFAs that elect to take 50 percent or more of the risk of loss in 10 percent increments on mortgages issued under this program.

Level II participants means HFAs that elect to take 10 or 25 percent of the risk of loss on mortgages issued under this program, dependent on the loan-to-replacement cost or loan-to-value ratio of the project to be insured.

Mortgage means such a single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

Mortgagee means the original lender under a mortgage and its successors and assigns approved by the Commissioner.

Mortgagor means the original borrower under a mortgage and its successor and assigns.

Multifamily housing means housing accommodations on the mortgaged property that are designed principally for residential use, conform to standards satisfactory to the Secretary, and consist of not less than 5 rental units (including cooperative units) on 1 site. These units may be detached, semidetached, row house, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origina-

tion prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

Supportive services means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single room occupancy unit, the term includes any service provided to assist tenants in locating and retaining permanent housing. This definition is to be used in conjunction with the "gross rent" calculation.

§ 266.10 Allocations of assistance and credit subsidy.

(a) *Notice of availability of assistance.* HUD will announce the availability of assistance under this program through publication of a Notice in the FEDERAL REGISTER. Such Notice will invite qualified HFAs to submit an application for approval and/or for additional units under this part. The Notice will indicate the deadline date for submission of applications, required documentation, the address to which the applications must be submitted and other relevant information.

(b) Credit subsidy will be obligated and allocated in accordance with outstanding Department instructions.

§ 266.15 Risk-Sharing Agreement.

Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program. The Risk-Sharing Agreement shall be in a form acceptable to the Commissioner.

[61 FR 7947, Feb. 29, 1996]

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations

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will not adversely affect the interest of a lender under a Contract of Insurance on any mortgage already insured or on any mortgage to be insured on which HUD has already issued its firm approval letter.

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The provisions of 24 CFR part 246 do not apply to projects that are security for mortgages insured under this part.

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the pilot program described in this part, in addition to being approved as a mortgagee under § 202.10. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

- (1) Carry the designation of “top tier” or its equivalent as evaluated by Standard and Poor’s or any other nationally recognized rating Agency; or
- (2) Receive an overall rating of “A” for the HFA for its general obligation bonds from a nationally recognized rating agency; or
- (3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and
- (4) Be a HUD-approved multifamily mortgagee in good standing; and

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(5) Have at least five years experience in multifamily underwriting; and

(6) Certify that:

(i) The Department of Justice has not brought a civil rights suit against the Agency, and no suit is pending;

(ii) There has not been an adjudication of a civil rights violation in a civil action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has not issued a charge against the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50 to 90 percent of the risk of loss (increments of 10 percent).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects is greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects is less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA’s option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD.

[59 FR 62524, Dec. 5, 1994, as amended at 62 FR 20088, Apr. 24, 1997]

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgage.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the program under this part must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as a HUD-approved mortgagee must be submitted to HUD in accordance with the applicable HUD requirements.

(b) *Applications for participation in program.* Applications from HFAs for approval to participate in the program under this part will be submitted in response to a notice published in the FEDERAL REGISTER. The notice will include the required application exhibits and any other information or documentation necessary for approval for participation in the Risk-Sharing Program.

[61 FR 7947, Feb. 29, 1996]

§ 266.110 Reserve requirements.

(a) *HFAs with top-tier designation or overall rating of "A" on general obligation bonds.* An HFA with a top tier or equivalent designation or an HFA with an overall rating of "A" on its general obligation bonds is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. If the designation or rating is lost, the HFA must immediately establish a reserve account funded in accordance with the requirements set forth in paragraph (b) of this section. The reserve account must reflect all loans in the HFA's portfolio endorsed under this part.

(b) *Other HFAs.* (1) For other HFAs, a specifically identified dedicated account consisting entirely of liquid assets (*i.e.*, cash or cash equivalents or readily marketable securities) must be established and maintained in a financial institution acceptable to HUD. This account may be drawn upon by HUD and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this

part. The account must be established prior to the execution of any Risk Sharing Agreement under this part in an initial amount of not less than \$500,000. Thereafter, the HFA must deposit at each loan closing and thereafter maintain the following additional amounts in the dedicated account:

(i) \$10.00 per \$1,000 of the unpaid principal balance that is equal to or less than \$50 million; plus

(ii) \$7.50 per \$1,000 of the unpaid principal balance that is greater than \$50 million and less than \$150 million; plus

(iii) \$5.00 per \$1,000 of the unpaid principal balance that is greater than \$150 million.

(2) The Commissioner may determine that higher levels of reserves may be necessary.

§ 266.115 Program monitoring and evaluation.

(a) *HFA certifications.* HUD will rely heavily on the certifications required of an HFA under this part and such additional certifications as the Commissioner may require in his or her administrative procedures. An HFA's continued participation in the program is predicated upon compliance with these certifications and its recommending for endorsement only those mortgages that comply with requirements of the program, including the HFA's origination, underwriting and closing procedures incorporated by reference into the Risk-Sharing Agreement.

(b) *Monitoring and evaluation.* Monitoring and evaluation activities will focus on compliance with program requirements and performance of the HFA in meeting program objectives of providing affordable housing. They will enable HUD to evaluate the effectiveness of the program as required by section 542(d)(3) of the Act.

(c) *Responsibility for monitoring and evaluation.* The Commissioner or his or her designee will be responsible for overall program monitoring and evaluation.

(d) *HFA submissions.* (1) For each loan insured under this part, basic underwriting and closing information must be submitted in a format specified by HUD and must accompany the closing docket submitted in accordance with § 266.420(b). Information relative to

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project management and servicing (including disposition) will be required after endorsement.

(2) The HFA must submit semi-annual reports setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, and the status of all projects insured under this part (e.g., current, in default, acquired, under workout agreement, in bankruptcy). For projects where the mortgagor has declared bankruptcy, the HFA must submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

§ 266.120 Actions for which sanctions may be imposed.

Results of monitoring or other reviews may serve as the basis for the Commissioner's imposing sanctions on the HFA. Violations for which sanctions may be imposed include, but are not limited to:

(a) Commission of fraud or making a material misrepresentation by the HFA with respect to any mortgage insured or to any other matter under this part.

(b) Assignment or transfer of interest in any insured mortgage not in accord with the requirements of this part.

(c) Engagement in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(d) Actions or conduct for which sanctions may be imposed against the HFA by HUD's Mortgage Review Board under 24 CFR 25.9.

(e) Failure to:

(1) Reveal in its application for participation in the program all the information required by this part;

(2) Notify HUD in a timely manner of any pending or actual changes that would adversely affect HFA operations or financial status;

(3) Comply with all eligibility requirements for participation in the program;

(4) Issue debentures in the event of an initial claim payment by HUD, or to reimburse HUD for payment of a claim;

(5) Maintain its top tier designation or overall rating of "A" on general ob-

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ligation bonds (or if such designation or rating is lost, comply with paragraph (e)(6) of this section);

(6) Establish and maintain a dedicated account, if required, or meet other financial obligations under this program;

(7) Perform underwriting, insurance of advances, cost certification, management, servicing or property disposition functions in a prudent and acceptable manner based on the standards incorporated by reference into the Risk-sharing Agreement;

(8) Submit financial and other reports required by this part;

(9) Comply with any regulatory requirement or with the Risk-Sharing Agreement;

(10) Maintain any other standards HUD may establish for participation in this program;

(11) Enforce the regulatory agreement provisions with respect to individual projects;

(12) Maintain a default ratio acceptable to HUD relative to the HFA's own portfolio and the defaults experienced under this part by other program participants;

(13) Consider adequately special risk circumstances without compensating for the higher risks of such transactions (e.g., high loan-to-value ratios in areas with high vacancy or default rates); or

(14) Remit mortgage insurance premiums on a timely basis or failure to refund or credit mortgagor's accounts with overpaid mortgage insurance premiums.

§ 266.125 Scope and nature of sanctions.

(a) *Actions by Designated Office.* Depending on the nature and extent of the noncompliance with the requirements of this part, the Designated Office may take any of the following actions:

(1) Require that the HFA execute a trust agreement, establish a trust account in accordance with such agreement, and fund such account which may be drawn upon by HUD for purposes of meeting the HFA's risk-sharing obligations;

(2) Require the HFA to assume a higher portion of risk for the subject and future mortgages;

(3) Recommend to the Commissioner that the HFA be required to contract its loan servicing or property disposition functions to a third party;

(4) Recommend to the Commissioner that the mortgage insurance be terminated in cases of fraud or material misrepresentation by the HFA, or transfer of interest in an insured mortgage or assignment of the mortgage not in accord with the requirements of this part;

(5) Recommend to the Commissioner that approval for the HFA to participate in the program be suspended or withdrawn;

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 and/or that penalties be imposed pursuant to 24 CFR part 30;

(7) Require additional financial or other reports as may be necessary to monitor the activities of the HFA more closely.

(b) *Actions by Headquarters.* HUD Headquarters may impose any of the sanctions set forth or recommended in paragraph (a) of this section based upon its responsibilities for monitoring and overall program oversight.

(c) *Effect of suspension or withdrawal.* A suspension or withdrawal action will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

(d) *HFA right to informal hearing.* (1) Any sanction imposed by a Designated Office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the Designated Office Representative or his or her designee in the Designated Office. The HFA may request an informal hearing within 10 working days of receipt of the suspension or withdrawal action and the Designated Office shall give the HFA an opportunity to be heard within 10 working days of receipt of the HFA's request. The HFA may be represented by counsel. The Designated Office Representative, or his or her designee, will advise the HFA in writing of the decision within 10 working days of

the informal hearing, which decision will constitute final HUD action.

(2) Sanctions imposed by Headquarters will be handled in a similar manner, except that the informal hearing shall be before the Commissioner or his or her designee.

§ 266.130 Reinsurance.

Reinsurance will be permitted for the portion of the HFA risk, subject to the following requirements:

(a) Neither HUD's nor the HFA's position shall be subordinated;

(b) The reinsurance may not be used to reduce any reserve or fund balance requirements; and

(c) Such reinsurance does not incur an obligation to the Federal Government.

Subpart C—Program Requirements

§ 266.200 Eligible projects.

(a) *Minimum project size.* Projects insured under this part must consist of five or more rental dwelling units (including cooperative dwelling units) on one site. The site may consist of two or more non-contiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. The units may be detached, semi-detached, row houses, multifamily structures, or mobile home parks (exclusive of the mobile homes).

(b) *New construction or substantial rehabilitation.* Insurance under this part shall be for the purpose of financing the new construction or substantial rehabilitation of projects meeting the other requirements of this part as follows:

(1) *New construction* occurs when all project and construction elements are installed as part of the work.

(2) *Substantial rehabilitation* is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, liveability, marketability, and profitability: Replacement, alteration and/or modernization of building spaces, long-

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lived building or mechanical system components, or project facilities. Substantial rehabilitation may include but not consist solely of any combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, or new project additions.

(c) *Existing projects.* Financing of existing properties without substantial rehabilitation is allowed.

(1) If an existing multifamily project is being acquired and HUD insurance under this part will be used to facilitate the acquisition of projects to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs as determined by the Commissioner.

(2) If the property is subject to an HFA-financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk.

(d) *Projects receiving Section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount sup-

portable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested.

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

(f) *Board and care/assisted living facilities.* Board and care projects and assisted living facilities may be insured if the facilities meet the definition of those terms in § 266.5.

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

(h) *Zoning requirements.* Projects insured under this part must meet applicable zoning and other State/local government requirements.

§ 266.205 Ineligible projects.

The following projects and facilities are not eligible for insurance under this part:

(a) *Transient housing or hotels.* Rental for transient or hotel purposes. For purposes of this part, rental for transient or hotel purposes means:

(1) Rental for any period less than 30 days, or

(2) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, or valet service.

(b) *Projects in military impact areas.* A project located in a military impact area, as determined by HUD. A military impact area is generally a small or medium size metropolitan housing market area or a remote or isolated nonmetropolitan area where:

(1) Military-connected households comprise 25 percent or more of the total households in the market area. Military-connected households include

active duty military personnel, civilian employees of the military service (Department of Defense) or other Federal agency at or in support of the installation, and employees of contractors and sub-contractors directly associated with the military installation, and their dependents. Unaccompanied active duty military personnel housed in military-controlled group quarters housing (barracks, BOQ's) are excluded; and

(2) There is concern about the continued stability of the current level of military strength and mission at the installation based on public announcements from the Department of Defense or the military service of impending changes; and

(3) The complete reduction of military-connected households living in nonmilitary rental housing over a 5 year period, at an annual average decline of 20 percent, would, taking into account growth in the civilian economy and normal changes in the housing inventory, cause an adverse impact on the private rental market resulting in an increase in the rental vacancy rate in the housing market of 10 percent or more at the end of that period.

(c) *Retirement service centers.* Projects designed for the elderly with extensive services and luxury accommodations that provide for central kitchens and dining rooms with food service or mandatory services.

(d) *Nursing homes or intermediate care facilities.* Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care.

§ 266.210 HUD-retained review functions.

Certain functions are retained by the Commissioner. The HFA must submit any information or certification required by the Commissioner to permit determination of compliance with requirements concerning:

(a) *Previous participation of principals.* Previous participation of the principals of the mortgagor, general contractor, consultant or management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218.

(b) *Environmental review requirements.* To determine compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities, the HUD Field Office (or other responsible entity through such delegation as may be in effect by regulation hereafter) will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 (or as set forth in 24 CFR part 58 for the other responsible entity). These requirements must be completed before HUD may issue the firm approval letter.

(c) *Intergovernmental review.* Intergovernmental review of Federal programs under Executive Order 12372, as implemented in 24 CFR part 52.

(d) *Subsidy layering.* The Commissioner, or Housing Credit Agencies through such delegation as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(e) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

[59 FR 62524, Dec. 5, 1994, as amended at 60 FR 16573, Mar. 31, 1995]

§ 266.215 Functions delegated by HUD to HFAs.

The following functions are delegated by HUD to the HFAs:

(a) *Affirmative Fair Housing Marketing Plan (AFHMP).* The HFA will perform information collection, reviews and ministerial activities associated with the review and approval of the AFHMP for all projects. (Enforcement of fair housing and equal opportunity laws is the responsibility of HUD.)

(b) *Labor standards and prevailing wage requirements.* The HFA will perform information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions regarding labor standards, in accordance with § 266.225(e). (Enforcement of Davis-

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Bacon prevailing wage requirements and labor standards is the responsibility of HUD.)

(c) *Insurance of advances.* In cases involving insured advances, the HFA will approve periodic advances of mortgage insurance proceeds during construction of the project subject to terms specified by the Commissioner.

(d) *Cost certification.* The HFA will perform cost certification functions on each insured loan subject to terms specified by the Commissioner.

(e) *Lead-Based Paint.* The HFA will perform functions related to Lead-Based Paint requirements subject to terms specified by the Commissioner.

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes “housing for older persons” as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with the Fair Housing Act (42 U.S.C. 3601-3619), as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213), as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f), as implemented by 12 CFR part 202; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958-1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), and implemented by 24 CFR part 107; Executive Order 11246 (3 CFR 1964-1965 Comp., p. 339), as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply

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with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), as implemented by 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107), as implemented by 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by 24 CFR part 8.

§ 266.225 Labor standards.

(a) *Applicability of Davis-Bacon.* (1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), where the project meets all of the following conditions:

(i) Advances for the project are insured under this part;

(ii) The project involves new construction or substantial rehabilitation; and

(iii) The project will contain 12 or more dwelling units.

(2) Projects that do not meet these conditions are not subject to Davis-Bacon wage rates except to the extent required as a condition of other Federal assistance to the project.

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70. In applying part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute.

(d) *Advances.* (1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the

Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

(2) No advance under any mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be insured under this part unless there is filed with the application for the advance, and no such mortgage shall be insured under this part unless there is filed with the HFA after completion of the construction or substantial rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with paragraph (a) of this section.

(e) *Responsibility for enforcement and administration.* The Commissioner retains responsibility for enforcement of labor standards under this section, but the Commissioner may delegate to the HFA information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. For example, failure of an HFA to supply or ensure inclusion of the proper contract clauses or wage determination in a contract or building loan agreement may require the HFA to fund increased compensation to a contractor as the result of increased wages attributable to incorpo-

ration of the proper clauses and wage determination.

Subpart D—Processing, Development, and Approval

§ 266.300 HFAs accepting 50 percent or more of risk.

(a) *Underwriting standards.* An HFA electing to take 50 percent or more of the risk on loans may use its own underwriting standards and loan terms and conditions (as disclosed and submitted with its application) to underwrite and approve loans without further review by HUD.

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in §§ 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

(2) Establish the maximum insurable mortgage and review plans and specifications for compliance with HFA standards;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a), (b), and (c), the HUD Field Office will issue a firm approval letter.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee

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will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b)(2). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii).

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in § 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

(2) Establish the maximum insurable mortgage, and review plans and specifications for compliance with HFA standards as approved by HUD;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210 (a), (b), and (c), the HUD Field Office will issue a firm approval letter which, among other things, will apportion units and obligate credit subsidy to the project.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and ap-

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proval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.310 Insurance of advances or insurance upon completion; applicability of requirements.

(a) *General.* HUD will agree to insure periodic advances of mortgage proceeds or to insure the entire mortgage upon completion of construction for projects involving new construction or substantial rehabilitation. Existing projects without the need for substantial rehabilitation will be considered insurance upon completion cases. In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of construction, substantial rehabilitation or repairs. In periodic advances cases, progress payments approved by the HFA and both an initial and final endorsement on the mortgage are required.

(b) *Insurance of advances.* Periodic advances will be authorized by the HFA subject to terms specified by the Commissioner.

(c) *Insurance upon completion—(1) New construction and substantial rehabilitation.* An HFA may approve a loan that will be insured upon completion of construction of the project. The HFA approval must prescribe a designated period during which the mortgagor must start construction or substantial rehabilitation. If construction or rehabilitation is started as required, the approval will be valid for the period estimated by the HFA for construction and loan closing, including any extension approved by the HFA.

(2) *Existing projects with no substantial rehabilitation.* Existing projects with or without repairs are only insured upon completion, although HFAs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the HFA.

(d) *Requirements applicable to both periodic advances and insurance upon completion cases*—(1) *Inspections*. The HFA must inspect projects under this part at such times during construction, substantial rehabilitation, or repairs as the HFA determines. The inspections must be conducted to assure compliance with plans and specifications, work write-ups, and other contract documents.

(2) *Approval of advances*. At all times, the loan must be kept in balance, and advances approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. In approving advances, HFAs must make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

(3) *Cost certification*. In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability*. Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion*. The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow*. The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be

remedied within the time period required by the HFA.

(e) *Mortgagee of record*. The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

§ 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

§ 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

- (a) In fee simple;
- (b) Under a renewable lease of not less than 99 years; or
- (c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

§ 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

§ 266.405 Title.

(a) *Eligibility of title*. Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence*. The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

§ 266.410 Mortgage provisions.

(a) *Form*. The mortgage and note must be executed on a form approved

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by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a “change in use” as that term is employed in the mortgage since the property will continue to have a residential use both before and after conversion.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and

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owner agree to a modification of the terms of the mortgage (*e.g.*, to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§ 266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§ 266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner’s

authorized Departmental representative for insurance of the mortgage by endorsement of the mortgage note. The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR part 266 in effect on the date of endorsement. The note must also specify the date of endorsement, *i.e.*, the date of HUD endorsement of the project mortgage, and the risk of loss assumed by the HFA and by HUD.

(b) *Closing docket.* The HFA's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 266.210, and certifications and information as follows:

(1) Information concerning the mortgage amount and term, location, number and type of units, income and expenses, rents, projects and market occupancy percentages, value/replacement cost, interest rate, and similar statistical information in accordance with the Commissioner's administrative procedures.

(2) Copies of the amortization schedule, Note and Risk-Sharing Agreement.

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards and loan terms and conditions as approved by HUD).

(4) At the time of final endorsement, a certification for periodic advances cases, if submitted for final endorsement, that advances were made proportionate to construction progress.

(5) A copy of the HFA-approved cost certification if the project is submitted for final endorsement.

(6) A certification that equal employment requirements are followed.

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan and found it acceptable.

(8) A certification that a dedicated account, if required, has been increased in accordance with § 266.110(b).

(9) Certifications required under § 266.415 concerning liens and contractual obligations.

(10) Copies of the Hazard Insurance Policy with a clause making the loss payable to the HFA.

(11) For projects subject to Davis-Bacon prevailing requirements under § 266.225, the certification and information concerning payment of prevailing wage rates required by § 266.225(d).

(12) Certified copies of mortgage (deed of trust) with attached regulatory agreement, and note for HUD files.

Subpart F—Project Management and Servicing

§ 266.500 General.

The HFA will have full responsibility for the administration of the provisions of this subpart and for managing and servicing projects insured under this part. The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

§ 266.505 Regulatory agreement requirements.

(a) *General.* (1) The HFA must execute a Regulatory Agreement, in recordable form, between the mortgagor and the HFA to be in force for the duration of the insured mortgage and note or bond. The Regulatory Agreement must include a description of the property. The Regulatory Agreement must be incorporated by reference into the mortgage and recorded with the mortgage.

(2) The Regulatory Agreement executed between the HFA and the mortgagor must be binding upon the mortgagor and any of its successors and assigns and upon the HFA and any of its successors for so long as the mortgage is insured by HUD or HUD holds an HFA debenture issued in connection with a claim arising from the insured mortgage. The HFA may not assign the Regulatory Agreement.

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(3) The HFA will enforce the Regulatory Agreement and take actions against any mortgagors who violate its provisions. Such actions may involve a declaration of default and application to any court for specific performance of the agreement.

(b) *Requirements.* The Regulatory Agreement must require the mortgagor to comply with the provisions of this part and obligate the mortgagor, among other things, to:

(1) Make all payments due under the mortgage and note/bond.

(2) Where necessary, establish a sinking fund for future capital needs.

(3) Maintain the project as affordable housing, as defined in § 266.5.

(4) Continue to use dwelling units for their original purposes.

(5) Comply with such other requirements as may be established by the HFA and set forth in the Regulatory Agreement.

(6) [Reserved]

(7) Maintain complete books and records established solely for the project.

(8) Comply with the Affirmative Fair Housing Marketing Plan and all other fair housing and equal opportunity requirements.

(9) Operate as a single asset mortgagor.

(10) Make books and records available for HUD or General Accounting Office (GAO) review with appropriate notification.

(11) Permit HUD officials or employees to inspect the project upon request by the Commissioner.

(c) *Enforcement.* The Regulatory Agreement shall be enforced by the HFA.

[59 FR 62524, Dec. 5, 1994, as amended at 63 FR 46578, 46593, Sept. 1, 1998; 65 FR 16296, Mar. 27, 2000]

§ 266.507 Maintenance requirements.

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G.

[63 FR 46578, Sept. 1, 1998]

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform inspections in accordance with

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the physical inspection procedures in 24 CFR part 5, subpart G.

(b) *Annual audits of projects.* The HFA must analyze projects' annual audits and provide a copy to HUD along with a summary of unresolved findings and actions planned, with target dates, to correct unresolved findings.

(c) *HFA's annual financial statement.* The HFA must provide HUD with annual audited financial statement in accordance with the requirements of 2 CFR part 200, subpart F.

[59 FR 62524, Dec. 5, 1994, as amended at 63 FR 46578, Sept. 1, 1998; 65 FR 16296, Mar. 27, 2000; 80 FR 75936, Dec. 7, 2015]

§ 266.515 Record retention.

(a) *Loan origination and servicing.* Records pertaining to the mortgage loan origination and servicing of the loan must be maintained for as long as the insurance remains in force.

(b) *Defaults and claims.* Records pertaining to a mortgage default and claim must be retained from the date of default through final settlement of the claim for a period of no less than three years after final settlement.

§ 266.520 Program monitoring and compliance.

HUD will monitor the performance of the HFA in accordance with the provisions covered under this subpart.

Subpart G—Contract Rights and Obligations

MORTGAGE INSURANCE PREMIUMS

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium (calculated on a per annum basis) equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to

the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The HFA shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The HFA shall adjust this payment by deducting an amount equal to the portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The HFA shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (overpayment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the

date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

Percentage share of risk		Prescribed percentage for calculating HFA's annual MIP
HUD	HFA	
90	10	.45
75	25	.375
50	50	.25
40	60	.2
30	70	.15
20	80	.1
10	90	.05

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the HFA shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d). If the mortgage is modified, the HFA shall submit to the Commissioner a copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d).

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(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

§ 266.606 Mortgage insurance premium: Duration and method of paying.

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

- (1) The mortgage is paid in full;
- (2) A deed to the HFA is filed for record;
- (3) An application for initial claim payment is received by the Commissioner; or
- (4) The Contract of Insurance is otherwise terminated.

(b) *Method of payment.* The HFA shall pay any mortgage insurance premium required by this part in cash.

§ 266.608 Mortgage insurance premium: Pro rata refund.

If the Contract of Insurance is terminated by payment in full or is terminated by the HFA on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the HFA for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs be-

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fore the date of the first payment to principal.

§ 266.610 Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that mortgage insurance premiums be remitted electronically.

[63 FR 1303, Jan. 8, 1998]

INSURANCE ENDORSEMENT

§ 266.612 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the HFA shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

ASSIGNMENTS

§ 266.616 Transfer of partial interest under participation agreement.

The HFA may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

- (a) Legal title to the insured mortgage or mortgages shall be held by the HFA; and
- (b) The participation agreement, declaration of trust or other instrument

under which the partial interest is transferred shall provide that:

(1) The HFA shall remain mortgagee of record under the contract of mortgage insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the HFA or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

TERMINATION

§ 266.620 Termination of Contract of Insurance.

The Contract of Insurance shall terminate if any of the following occurs:

- (a) The mortgage is paid in full;
- (b) The HFA acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;
- (c) A party other than HFA acquires the property at a foreclosure sale;
- (d) The HFA notifies the Commissioner of Termination of Insurance (voluntary termination);
- (e) The HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect to information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence;
- (f) The receipt by the Commissioner of an Application for Final Claims Settlement;
- (g) If the HFA acquires the mortgaged property and fails to make an initial claim.

§ 266.622 Notice and date of termination by the Commissioner.

The Commissioner shall notify the HFA that the Contract of Insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.

CLAIM PROCEDURES

§ 266.626 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated by reference in the mortgage. An HFA becomes eligible for insurance benefits on the basis of a covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the HFA must notify the Commissioner within 10 days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the HFA has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default.

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment (or, if appropriate, for partial claim payment) within 75 days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 days from the date of default, the deadline for filing a claim. In those cases where the HFA certifies that the

project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 days, not to exceed 360 days from the date of default.

§ 266.628 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section.

(2) HUD shall make an initial claim payment to the HFA that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 266.604(d).

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this section within the specified time (including any granted extension of time), HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* HUD shall pay the claim in cash.

§ 266.630 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 266.626(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the HFA has not previously received a partial claim payment, the HFA may file a claim for a partial claim payment under § 266.630.

Otherwise, the HFA must file for an initial claim payment under § 266.628.

(b) *HFA submission.* In addition to any other requirements set forth in administration instructions, the HFA must provide the following information with its application for a partial claim payment:

(1) The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and

(2) A certification that:

(i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the project are sufficient to restore the financial viability of the project;

(iii) The project is or can (at reasonable cost) be made structurally sound;

(iv) The management of the project is satisfactory;

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the HFA's application is acceptable, the Commissioner shall notify the HFA to process the partial payment, which will include the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA. When the second mortgage is closed, the HFA shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the HFA, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the HFA of the information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 days from the date of any notification for further action.

(d) *Requirements*—(1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

(3) *HFA second mortgage.* Repayment of the relief provided by the HFA must be secured by a second mortgage to the HFA. This second mortgage may provide for postponed amortization and may not be assigned by the HFA. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a percentage of all amounts collected on the HFA's second mortgage within 15 days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the HFA must submit to the Commissioner an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.632 Withdrawal of claim.

In case of a default and subsequent filing of claim, the HFA shall determine the form of workout or modification and will inform HUD of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by HUD, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 266.634 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, HUD may

reinstate the contract of insurance on the following conditions:

(1) The HFA has not acquired the project;

(2) The mortgagor has cured the default; and

(3) The HFA requests that HUD reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to HUD, HUD shall notify the HFA of the date the contract of insurance will be reinstated and shall advise the HFA of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the HFA shall pay HUD an amount equal to the initial claim amount, as determined under § 266.628(a)(1), plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the HFA of the amount specified in paragraph (c) of this section, HUD shall return the HFA debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 266.636 Insuring new loans for defaulted projects.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

§ 266.638 Issuance of HFA Debenture.

(a) *Condition to initial claim payment.* The HFA must issue an instrument in the form of a debenture to HUD within 30 days of receiving the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

(b) *Term of HFA Debenture.* The HFA Debenture shall be dated the same date that the initial claim payment is

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issued. The HFA Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the HFA time to foreclose and/or resell the project. HUD may provide a written extension of the five year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy. The HFA Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *HFA Debenture amount.* (1) The HFA Debenture shall be for the full initial claim amount as determined under § 266.628(a)(1) (minus any excess funds returned to HUD under § 266.628(a)(3)).

(2) The full amount of the HFA Debenture shall be payable to HUD upon maturity, unless the HFA Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 266.634; or

(ii) Final claim settlement under § 266.654.

(d) *HFA Debenture interest rate.* The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.

(e) *Form of HFA Debenture.* The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where

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such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

§ 266.640 Foreclosure and acquisition.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 266.642 Appraisals.

Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD, an appraisal should be made to determine the value of the project. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45-day period immediately preceding the date when the HFA files an application for final claim settlement. If at the time of final claim settlement the HFA has not sold the project, an appraisal should be made to determine the value of the project at its highest and best use.

§ 266.644 Application for final claim settlement.

The HFA shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the HFA debenture.

§ 266.646 Determining the amount of loss.

The amount of the total loss to be shared by HUD and the HFA is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 266.648; and

(c) Less all items set forth in § 266.650.

§ 266.648 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 266.646(a):

(a) The amount of all payments that the HFA made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the HFA made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the requirements of local laws;

(3) Expenses in connection with the sale of property; and

(4) Bankruptcy expenses approved by the Office of General Counsel.

(d) The amount of HFA Debenture interest paid by the HFA to HUD.

§ 266.650 Items deducted from total loss.

In computing insurance benefits, the following items are deducted from the amounts described in § 266.646(a) and (b):

(a) All amounts received by the HFA on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the HFA holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the HFA accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/project that the HFA received after the date of default.

(e) The proceeds from the sale of the project or the appraised value of the project as provided in § 266.642 as follows:

(1) If the HFA disposes of the project through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the HFA disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the HFA has not disposed of the project within 5 years from the date of issuance of the HFA Debentures (unless an extension has been granted pursuant to § 266.638), the amount deducted shall be the appraised value.

(f) Any and all claims that the HFA has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

(g) The amount of daily HFA Debenture interest accrued but not paid from the anniversary date of the last HFA Debenture interest payment to the date an application for final claim payment is received by the Commissioner.

§ 266.652 Determining share of loss.

The total loss computed in § 266.646 shall be shared by HUD and the HFA in accordance with their respective percentage of risk as specified in the note and the addendum to the Risk-Sharing Agreement between HUD and the HFA.

§ 266.654 Final claim settlement and HFA Debenture redemption.

(a) *Final claim payment.* If the initial claim amount, as determined under § 266.628(a)(1), is less than HUD's share of the loss, HUD shall make a final claim payment to the HFA that is equal to the difference between HUD's share of the loss and the initial claim amount and shall return the HFA Debenture to the HFA for cancellation.

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(b) *HFA reimbursement payment.* If the initial claim amount, as determined under § 266.628(a)(1), is more than HUD's share of the loss, the HFA shall, within 30 days of notification by HUD of the amount due, remit to HUD an amount that is equal to the difference between the initial claim amount and HUD's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The HFA Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period. If an HFA is in default under an existing debenture and files a claim on another project under this part, HUD will charge the HFA's Dedicated Account for the amount owed the Department. In cases of top-tier or A-rated HFA's which are not required to maintain a Dedicated Account, HUD will inform the rating agencies of the HFA's failure to pay on their debt obligation and of its violation of the Risk-Sharing Agreement.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of an HFA (*e.g.*, failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the HFA, notwithstanding the risk apportionment otherwise agreed to by HUD and the HFA.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

§ 266.656 Recovery of costs after final claim settlement.

If, after final claim settlement, the HFA recovers additional sums as the result of the sale of the project or otherwise, the total amount of such recovery shall be shared by HUD and the HFA in accordance with the prescribed percentage of shared risk.

§ 266.658 Program monitoring and compliance.

HUD will monitor the performance of the HFA for compliance with the provisions of this subpart.

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PART 267—CREDIT RISK RETENTION

Subpart A—Authority, Purpose, Scope and Definitions

Sec.

267.1 Credit risk retention exceptions and exemptions for HUD programs.

267.2 Definitions.

Subpart B—Credit Risk Retention

267.3 Base risk retention requirement.

267.4 Standard risk retention.

267.5 Revolving pool securitizations.

267.6 Eligible ABCP conduits.

267.7 Commercial mortgage-backed securities.

267.8 Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.

267.9 Open market CLOs.

267.10 Qualified tender option bonds.

Subpart C—Transfer of Risk Retention

267.11 Allocation of risk retention to an originator.

267.12 Hedging, transfer and financing prohibitions.

Subpart D—Exceptions and Exemptions

267.13 Exemption for qualified residential mortgages.

267.14 Definitions applicable to qualifying commercial loans, commercial real estate loans, and automobile loans.

267.15 Qualifying commercial loans, commercial real estate loans, and automobile loans.

267.16 Underwriting standards for qualifying commercial loans.

267.17 Underwriting standards for qualifying CRE loans.

267.18 Underwriting standards for qualifying automobile loans.

267.19 General exemptions.

267.20 Safe harbor for certain foreign-related transactions.

267.21 Additional exemptions.

267.22 Periodic review of the QRM definition, exempted three-to-four unit residential mortgage loans, and community-focused residential mortgage exemption.

AUTHORITY: 15 U.S.C. 78-o-11; 42 U.S.C. 3535(d).

SOURCE: 79 FR 77740, Dec. 24, 2014, unless otherwise noted.

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States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

§ 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

Subpart A—General Requirements

- Sec.
- 202.1 Purpose.
- 202.2 Definitions
- 202.3 Approval status for lenders and mortgagees.
- 202.4 Request for determination of compliance.
- 202.5 General approval standards.

Subpart B—Classes of Lenders and Mortgagees

- 202.6 Supervised lenders and mortgagees.
- 202.7 Nonsupervised lenders and mortgagees.
- 202.8 Sponsored third-party originators.
- 202.9 Investing lenders and mortgagees.
- 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.

Subpart C—Title I and Title II Specific Requirements

- 202.11 Title I.
- 202.12 Title II.

AUTHORITY: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

SOURCE: 62 FR 20082, Apr. 24, 1997, unless otherwise noted.

Subpart A—General Requirements

§ 202.1 Purpose.

This part establishes minimum standards and requirements for approval by the Secretary of lenders and

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mortgagees to participate in the Title I and Title II programs.

§ 202.2 Definitions.

Act means the National Housing Act (12 U.S.C. 1702 *et seq.*).

Claim means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

Default means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

Lender or *Title I lender* means a financial institution that:

(a) Holds a valid Title I Contract of Insurance and is approved by the Secretary under this part as a supervised lender under § 202.6, a nonsupervised lender under § 202.7, an investing lender under § 202.9, or a governmental or similar institution under § 202.10; or

(b) Is under suspension or held a Title I contract that has been terminated but remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

Loan or *Title I loan* means a loan authorized for insurance under Title I of the Act.

Mortgage, Title II mortgage or insured mortgage means a mortgage or loan insured under Title II or Title XI of the Act.

Mortgagee or *Title II mortgagee* means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under 202.10.

Multifamily mortgagee means a mortgagee approved to participate only in multifamily Title II programs, except that for purposes of § 202.8(b)(1) the term also means a mortgagee approved to participate in both single family and multifamily Title II programs.

Normal rate means the rate of defaults and claims on insured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which a mortgagee originates mortgages.

Origination approval agreement means the Secretary's agreement that a mortgagee is approved to originate single family insured mortgages.

Title I program(s) means an insurance program or programs authorized by Title I of the Act.

Title II program(s) means an insurance program or programs authorized by Title II or Title XI of the Act.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 65181, Dec. 10, 1997; 75 FR 20731, Apr. 20, 2010]

§ 202.3 Approval status for lenders and mortgagees.

(a) *Initial approval.* A lender or mortgagee may be approved for participation in the Title I or Title II programs upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary.

(1) Approval is signified by:

(i) The Secretary's agreement that the lender or mortgagee is considered approved under the Title I or Title II programs, except as otherwise ordered by the Mortgagee Review Board or an officer or subdivision of the Department to which the Mortgagee Review Board has delegated its power, unless the lender or mortgagee voluntarily relinquishes its approval;

(ii) Consent by the lender or mortgagee to comply at all times with the general approval requirements of § 202.5, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described under subpart B at §§ 202.6 through 202.10; and

(iii) Under the Title I program, the issuance of a Contract of Insurance constitutes an agreement between the Secretary and the lender and which governs participation in the Title I program.

(2) Limitations on approval:

(i) Separate approval as lender or mortgagee is required for participation in the Title I or Title II programs, respectively. Application must be made, and approval will be granted, on the basis of one or both categories of programs, as is appropriate.

(ii) Separate approval as mortgagee is required for the Single Family Mortgage Insurance Programs and for the Multifamily Mortgage Insurance Programs. Application must be made, and approval will be granted, on the basis of either or both categories, as is appropriate.

(iii) In addition to the requirements for approval as a Title II mortgagee, the Secretary may from time to time issue eligibility requirements for participation in specific programs, such as the Direct Endorsement program.

(iv) A Title II mortgagee may be approved to operate either on a nationwide basis or on a geographically restricted basis in only those areas designated by the Secretary.

(v) A Title I lender may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of this lending area shall be subject to a determination by the Secretary that the lender is able to originate loans in compliance with part 201 of this chapter within such expanded area.

(3) *Authorized agents.* A mortgagee approved under §§ 202.6, 202.7, or 202.10 as a nonsupervised mortgagee, supervised mortgagee, or governmental or similar institution approved as a Direct Endorsement mortgagee under 24 CFR 203.3 may, with the approval of the Secretary, designate a nonsupervised or supervised mortgagee with Direct Endorsement approval under 24 CFR 203.3 as authorized agent for the purpose of underwriting loans. The application for mortgage insurance may be submitted in the name of the FHA-approved mortgagee or its designated authorized agent under this paragraph.

(b) *Recertification.* On each anniversary of the approval of a lender or mortgagee, the Secretary will determine whether recertification, i.e., continued approval, is appropriate. The Secretary will review the yearly verification report required by § 202.5(m) and other pertinent documents, ascertain that all application and annual fees have been paid, and request any further information needed to decide upon recertification.

(c) *Termination*—(1) *Termination of the Title I Contract of Insurance*—(i) *Notice.*

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A Contract of Insurance may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the lender at least 5 days prior written notice.

(ii) *Informal meeting.* If requested, and before expiration of the 5-day notice period, a lender shall be entitled to an informal meeting with the Department official taking action to terminate the Contract of Insurance.

(iii) *Effect of termination.* Termination of a Contract of Insurance shall not affect:

(A) The Department's obligation to provide insurance coverage with respect to eligible loans originated before the termination, unless there was fraud or misrepresentation;

(B) A lender's obligation to continue to pay insurance charges or premiums and meet all other obligations, including servicing, associated with eligible loans originated before termination; or

(C) A lender's right to apply for and be granted a new Title I Contract of Insurance, provided that the requirements for approval under this part are met.

(2) *Credit Watch Termination.* (i) *Scope and frequency of review.* The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office. HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Mortgagee Letter. For this purpose, and for all purposes under paragraph (c) of this section, a mortgage is considered to be originated in the same federal fiscal year in which its amortization commences. The Secretary may also review the insured mortgage performance of a mortgagee's branch offices individually and may terminate the authority of the branch or the authority of the mortgagee's overall operation.

(ii) *Credit Watch Status.* Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on insured mortgages originated, un-

derwritten, or both, in an area which exceeds 150 percent of the normal rate and its origination approval agreement has not been terminated.

(iii) *Notice of termination.* (A) *Notice of termination of origination approval agreement.* The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages originated in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages.

(B) *Notice of termination of direct endorsement approval.* The Secretary may notify a mortgagee that its direct endorsement approval under 24 CFR part 203 will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on insured mortgages underwritten in an area which exceeded 200 percent of the normal rate and exceeded the national default and claim rate for insured mortgages. The termination of a mortgagee's direct endorsement approval pursuant to this section is separate and apart from the termination of a mortgagee's direct endorsement approval under 24 CFR part 203.

(C) *No need for prior action by Mortgagee Review Board.* The termination notices described in paragraphs (c)(2)(ii)(A) and (B) of this section may be given without prior action by the Mortgagee Review Board.

(D) *Underserved areas.* Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, as defined in 24 CFR 81.2, the Secretary may determine not to terminate the mortgagee's origination approval agreement and/or direct endorsement approval.

(iv) *Request for informal conference.* Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Single Family Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the

date of the proposed termination notice. Unless HUD grants an extension, the informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Single Family Housing or designee may withdraw the termination notice.

(v) *Limitation on the establishment of new branches.* Upon receipt of a proposed termination notice of its origination approval agreement, the mortgagee shall not establish a new branch or new branches for the origination of FHA-insured mortgages in the area or areas that are covered by the proposed termination notice. As of January 18, 2005, a mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either:

(A) The proposed termination notice is withdrawn or

(B) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with paragraph (e) of this section.

(vi) *Effects of termination.* (A) *Termination of origination approval agreement.* If a mortgagee's origination approval agreement is terminated, it may not originate single family insured mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(B) *Termination of direct endorsement approval.* If a mortgagee's direct endorsement approval is terminated, it may not underwrite single family insured mortgages for the area(s) identified in the termination notice, unless the direct endorsement approval is reinstated by the Secretary in accordance with paragraph (e) of this section, notwithstanding any other provision of this part except § 202.3(c)(2)(vii)(A).

(vii) *Rights and obligations in the event of termination.* Termination of the origination approval agreement and/or direct endorsement approval shall not affect:

(A) The eligibility of the mortgage for insurance, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Endorsement or Lender Insurance mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated or underwritten after the date of termination by the mortgagee shall be insured unless the mortgagee's origination approval agreement and/or direct endorsement approval is reinstated by the Secretary;

(B) The right of a mortgagee whose direct endorsement approval has been terminated to transfer cases to another mortgagee with direct endorsement approval for the area covered by the termination.

(C) A mortgagee's obligation to continue to pay insurance premiums and meet all other obligations, including servicing, associated with insured mortgages;

(D) A mortgagee's right to apply for reinstatement of the origination approval agreement and/or direct endorsement approval in accordance with paragraph (e) of this section; or

(E) A mortgagee's right to purchase insured mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

(d) *Withdrawal and suspension of approval.* Lender or mortgagee approval may be suspended or withdrawn by the Mortgagee Review Board as provided in part 25 of this title.

(e) *Reinstatement—(1) General.* A mortgagee whose origination approval agreement and/or direct endorsement approval has been terminated under paragraph (c) of this section may apply for reinstatement if:

(i) The origination approval agreement and/or direct endorsement approval for the affected branch or branches has been terminated for at least six months; and

(ii) The mortgagee continues to be an approved mortgagee meeting the general standards of § 202.5 and the specific requirements of §§ 202.6, 202.7, 202.8 or 202.10, and 202.12.

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(2) *Application for reinstatement.* The mortgagee's application for reinstatement must:

(i) Be in a format prescribed by the Secretary and signed by the mortgagee;

(ii) Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and

(iii) Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in paragraph (e)(2)(ii) of this section, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

(3) *HUD action on reinstatement application.* The Secretary will grant the mortgagee's application for reinstatement if the mortgagee's application is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

[62 FR 20082, Apr. 24, 1997, as amended at 62 FR 30225, June 2, 1997; 62 FR 65181, Dec. 10, 1997; 69 FR 75807, Dec. 17, 2004; 75 FR 20731, Apr. 20, 2010; 78 FR 57060, Sept. 17, 2013]

§ 202.4 Request for determination of compliance.

Pursuant to section 539(a) of the Act, any person may file a request that the Secretary determine whether a lender or mortgagee is in compliance with § 202.12(a) or with provisions of this chapter implementing sections 223(a)(7) and 535 of the Act such as §§ 201.10(g), 203.18d and 203.43(c)(5) of this chapter (only section 535 applies to lenders). The request for determination shall be made to the following address: Department of Housing and Urban Development, Office of Lender Activities and Program Compliance, 451 Seventh Street SW., Washington, DC, 20410. The Secretary shall inform the requestor of the disposition of the request. The Secretary shall publish in the FEDERAL REGISTER the disposition of any case

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referred by the Secretary to the Mortgage Review Board.

§ 202.5 General approval standards.

To be approved for participation in the Title I or Title II programs, and to maintain approval, a lender or mortgagee shall meet and continue to meet the general requirements of paragraphs (a) through (n) of this section (except as provided in § 202.10(b)) and the requirements for one of the eligible classes of lenders or mortgagees in §§ 202.6 through 202.10.

(a) *Business form.* (1) The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership. A partnership must meet the requirements of paragraphs (a)(1)(i) through (iv) of this section.

(i) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(ii) One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c), and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

(iii) The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All insured mortgages and Title I loans held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(iv) The Secretary must be notified immediately of any amendments to the partnership agreement that would affect the partnership's actions under the Title I or Title II programs.

(2) *Use of business name.* The lender or mortgagee must use its HUD-registered business name in all advertisements and promotional materials related to FHA programs. HUD-registered business names include any alias or "doing business as" (DBA) on file with FHA. The lender or mortgagee must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(3) *Non-FHA-approved entities.* A lender or mortgagee that accepts a loan application from a non-FHA-approved entity must confirm that the entity's legal name and Tax ID number are included in the FHA loan origination system record for the subject loan. The loan to be insured by FHA must be underwritten by the FHA-approved lender or mortgagee.

(b) *Employees.* The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages or Title I loans, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities.

(c) *Officers.* All employees who will sign applications for mortgage insurance on behalf of the mortgagee or report loans for insurance shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring insurance coverage.

(d) *Escrows.* The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work comple-

tion deposits, and all periodic payments received under loans or insured mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.

(e) *Servicing.* A lender shall service or arrange for servicing of the loan in accordance with the requirements of 24 CFR part 201. A mortgagee shall service or arrange for servicing of the mortgage in accordance with the servicing responsibilities contained in subpart C of 24 CFR part 203 and in 24 CFR part 207, with all other applicable regulations contained in this title, and with such additional conditions and requirements as the Secretary may impose.

(f) *Business changes.* The lender or mortgagee shall provide prompt notification to the Secretary, in such form as prescribed by the Secretary, of:

(1) All changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business; and

(2) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, of the lender or mortgagee, or the lender or mortgagee itself, that is subject to one or more of the sanctions in paragraph (j) of this section.

(g) *Financial statements.* The lender or mortgagee shall:

(1) Furnish to the Secretary a copy of its audited financial statements within 90 days of its fiscal year end, except as provided in §202.6(c);

(2) Furnish such other information as the Secretary may request; and

(3) Submit to an examination of that portion of its records that relates to its Title I and/or Title II program activities.

(h) *Quality control plan.* The lender or mortgagee shall implement a written quality control plan, acceptable to the Secretary, that assures compliance with the regulations and other issuances of the Secretary regarding

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loan or mortgage origination and servicing.

(i) *Fees.* The lender or mortgagee, unless approved under § 202.10, shall pay an application fee and annual fees, including additional fees for each branch office authorized to originate Title I loans or submit applications for mortgage insurance, at such times and in such amounts as the Secretary may require. The Secretary may identify additional classes or groups of lenders or mortgagees that may be exempt from one or more of these fees.

(j) *Ineligibility.* For a lender or mortgagee to be eligible for FHA approval, neither the lender or mortgagee, nor any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the lender or mortgagee shall:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424 or 24 CFR part 25, or under similar procedures of any other federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender or mortgagee to participate in the Title I or Title II programs;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or *nolo contendere* to, a felony related to participation in the real estate or mortgage loan industry:

(i) During the 7-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) Be in violation of provisions of the Secure and Fair Enforcement (SAFE) Mortgage Licensing Act of 2008 (12 U.S.C. 5101 *et seq.*) or any applicable provision of state law; or

(7) Be in violation of any other requirement established by the Secretary.

(k) *Branch offices.* A lender may, upon approval by the Secretary, maintain branch offices for the origination of Title I or Title II loans. A branch office of a mortgagee must be registered with the Department in order to originate mortgages or submit applications for mortgage insurance. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

(1) *Conflict of interest and responsibility.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration, approved by the Secretary, may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(m) *Reports.* Each lender and mortgagee must submit an annual certification on a form prescribed by the Secretary. Upon application for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any state or states in which it will originate insured mortgages or Title I loans. In addition, each mortgagee shall file the following:

(1) An audited or unaudited financial statement, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20 percent of its net worth, and until the mortgagee demonstrates an operating profit for 2 consecutive quarters or until the next recertification, whichever is the longer period; and

(2) A statement of net worth within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership, or any transfer of control to a federal or state supervisory agency.

(n) *Net worth*—(1) *Applicability.* The requirements of this section apply to

approved supervised and non-supervised lenders and mortgagees under § 202.6 and § 202.7, and approved investing lenders and mortgagees under § 202.9. For ease of reference, these institutions are referred to as “approved lenders and mortgagees” for purposes of this section. The requirements of this section also apply to applicants for FHA approval under §§ 202.6, 202.7, and 202.9. For ease of reference, these entities are referred to as “applicants” for purposes of this section.

(2) *Phased-in net worth requirements for 2010 and 2011*—(i) *Applicants*. Effective on May 20, 2010, applicants shall comply with the net worth requirements set forth in paragraph (n)(2)(iii) of this section.

(ii) *Approved mortgagees*. Effective on May 20, 2011, each approved lender or mortgagee with FHA approval as of May 20, 2010 shall comply with the net worth requirements set forth in paragraphs (n)(2)(iii) or (n)(2)(iv) of this section, as applicable.

(iii) *Net worth requirements for non-small businesses*. Each approved lender or mortgagee that exceeds the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a required minimum net worth of not less than \$1,000,000. No less than 20 percent of the approved lender or mortgagee’s required minimum net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iv) *Net worth requirements for small businesses*. Each approved lender or mortgagee that meets the size standard for its industry classification established by the Small Business Administration at 13 CFR 121.201 Sector 52 (Finance and Insurance), Subsector 522 (Credit Intermediation and Related Activities) shall have a required minimum net worth of not less than \$500,000. No less than 20 percent of the approved lender or mortgagee’s required minimum net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary. If, based on the audited financial statement or other financial report that is required to be prepared at the end of

its fiscal year and provided to HUD at the commencement of the new fiscal year, an approved lender or mortgagee no longer meets the Small Business Administration size standard for its industry classification, the approved lender or mortgagee shall meet the net worth requirements set forth in paragraph (n)(2)(iii) of this section for a non-small business approved lender or mortgagee by the last day of the fiscal year in which the audited financial statement or other financial report, as applicable, was submitted.

(3) *Net worth requirements for 2013 and subsequent years*. Effective May 20, 2013:

(i) Irrespective of size, each applicant and each approved lender or mortgagee, for participation solely under the FHA single family programs, shall have a net worth of not less than \$1 million, plus an additional net worth of one percent of the total volume in excess of \$25 million of FHA single family insured mortgages originated, underwritten, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million. No less than 20 percent of the applicant’s or approved lender or mortgagee’s required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(ii) *Multifamily net worth requirements*. Irrespective of size, each applicant for approval and each approved lender or mortgagee for participation solely under the FHA multifamily programs shall have a minimum net worth of not less than \$1 million. For those multifamily approved lenders or mortgagees that also engage in mortgage servicing, an additional net worth of one percent of the total volume in excess of \$25 million of FHA multifamily mortgages originated, purchased, or serviced during the prior fiscal year, up to a maximum required net worth of \$2.5 million, is required. For multifamily approved lenders or mortgagees that do not perform mortgage servicing, an additional net worth of one half of one percent of the total volume in excess of \$25 million of FHA multifamily mortgages originated during the prior fiscal year, up to a maximum required net worth of \$2.5 million, is required. No less than 20 percent of the applicant’s

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or approved lender's or mortgagee's required net worth must be liquid assets consisting of cash or its equivalent acceptable to the Secretary.

(iii) *Dual participation net worth requirements.* Irrespective of size, each applicant for approval and each approved lender or mortgagee that is a participant in both FHA single-family and multifamily programs must meet the net worth requirements as set forth in paragraph (n)(3)(i) of this section.

[75 FR 20732, Apr. 20, 2010; 75 FR 23582, May 4, 2010; 77 FR 51468, Aug. 24, 2012; 78 FR 57060, Sept. 17, 2013]

Subpart B—Classes of Lenders and Mortgagees

§ 202.6 Supervised lenders and mortgagees.

(a) *Definition.* A supervised lender or mortgagee is a financial institution that is a member of the Federal Reserve System or an institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for mortgage insurance. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or insured mortgages, respectively.

(b) *Additional requirements.* In addition to the general approval requirements in § 202.5, a supervised lender or mortgagee shall meet the following requirements:

(1) *Net worth.* The net worth requirements appear in § 202.5(n).

(2) *Notification.* A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.

(3) *Fidelity bond.* A Title II mortgagee shall have fidelity bond coverage and errors and omissions insurance acceptable to the Secretary and in an amount required by the Secretary, or have alternative insurance coverage, approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee.

(4) *Audit report.* Except as provided in paragraph (c) of this section, a lender or mortgagee must:

(i) Comply with the financial reporting requirements in 24 CFR part 5, sub-

part H. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(A) Financial statements in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings, a statement of cash flows, an analysis of the lender's or mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(B) Such other financial information as the Secretary may require to determine the accuracy and validity of the audit report.

(ii) Submit a report on compliance tests prescribed by the Secretary.

(c) *Financial statement requirements for small supervised lenders and mortgagees—*(1) *Definitions.* For the purposes of this section, the following definitions apply:

(i) *Federal banking agency* means the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration; or any successor agency thereof.

(ii) *Small supervised lender or mortgagee* means a supervised lender or mortgagee possessing consolidated assets below the threshold for required audited financial reporting as established by the federal banking agency that is responsible for the oversight of that supervised lender or mortgagee.

(2) *Financial statement requirements.* Small supervised lenders and mortgagees shall not be subject to the requirement to submit a copy of an audited financial statement under § 202.5(g) and the audit report requirements under paragraph (b)(4) of this section. Small supervised lenders and mortgagees are required, within 90 days of their fiscal year end, to furnish to the Secretary the unaudited financial regulatory report—a consolidated or fourth quarter Report of Condition and Income (Federal Financial Institutions Examination Council forms 031 and 041, also

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(e) *Maximum time period of removal.* The maximum time period for removal from the Roster is 12 months from the effective date of removal for all removed counselors. A counselor who has been removed must apply for reinstatement on the Roster.

(f) *Placement on the Roster after removal.* A counselor who has been removed from the Roster must apply for reinstatement on the Roster (in accordance with §206.304) after the period of the counselor's removal from the Roster has expired. FHA may require the counselor to retake and pass the HECM exam for reinstatement when the reason for removal from the Roster was particularly egregious. Typically, the counselor will not be required to take and pass the HECM exam; however, FHA must be ensured by the counselor that the HECM counseling requirements are understood and will be followed. An application from a counselor for reinstatement on the Roster will be rejected if the period of the counselor's removal from the Roster has not expired.

(g) *Voluntary removal.* A HECM counselor will be removed from the Roster upon FHA's receipt of a written request from the counselor.

(h) *Other action.* Nothing in this section prohibits HUD from taking such other action against a HECM counselor or from seeking any other remedy against a counselor available to HUD by statute or other authority.

§ 206.308 Continuing education requirements of counselors listed on the HECM Counselor Roster.

A HECM counselor listed on the Roster must receive, on a continuing basis, training, education, and technical assistance related to HECMs. The HECM counselor must maintain evidence of the successful completion of such continuing education, and such evidence must be made available to FHA upon request. FHA will consider a HECM counselor's successful completion of a HECM course no less than once every 2 years as satisfying the requirements of this section.

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PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

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207.499 Effect of amendments.

AUTHORITY: 12 U.S.C. 1701z-11(e), 1709(c)(1), 1713, 1715(b), and 1735d; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24537, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§ 207.1 Eligibility requirements.

The eligibility requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 207 of the National Housing Act (12 U.S.C. 1713), as amended.

[61 FR 14405, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations

§ 207.251 Definitions.

As used in this subpart:

(a) The term *Commissioner* means the Federal Housing Commissioner.

(b) The term *act* means the National Housing Act, as amended.

(c) The term *mortgage* means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) The term *insured mortgage* means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term *contract of insurance* means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term *mortgagor* means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term *mortgagee* means the original lender under a mortgage its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. The specific premium to be charged will be set forth in FEDERAL REGISTER notice.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to not less than one-fourth of one percent nor more than one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement; and

(2) Not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the

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mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment; and

(2) Not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of not less than one-fourth of one percent nor more than one percent per annum as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium equal to not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as hereinafter provided in this subpart.

(g) Any change in mortgage insurance premiums pursuant to this section will apply to new commitments issued or reissued on or after August 1, 2001 and any notice setting mortgage insurance premiums issued pursuant to this section.

[66 FR 35072, July 2, 2001]

§ 207.252a Premiums—operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of not less than one-fourth of one percent nor more than one percent as the Secretary shall determine of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), (f) and (g) of Sec. 207.252 shall apply to operating loss loans.

[66 FR 35073, July 2, 2001]

§ 207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.

(a) The mortgagee, upon the initial-final endorsement of the mortgage for insurance pursuant to a Commitment to Insure Upon Completion issued in accordance with §207.32a, shall pay to the Commissioner a first mortgage insurance premium equal to one percent of the original face amount of the mortgage.

(b) The mortgagee, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the

sum of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) The provisions of paragraphs (d), (e) and (f) of §207.252 shall apply to mortgages insured pursuant to section 223(f) of the Act.

[40 FR 10177, Mar. 5, 1975]

§ 207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.

All of the provisions of §§ 207.252 and 207.252a governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act except that all mortgage insurance premiums due on such mortgages in accordance with §§ 207.252 and 207.252a shall be calculated on the basis of one percent.

[42 FR 59674, Nov. 18, 1977]

§ 207.252d Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978, as amended at 44 FR 23067, Apr. 18, 1979]

§ 207.252e Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that mortgage insurance premiums be remitted electronically.

[63 FR 1303, Jan. 8, 1998]

§ 207.253 Termination by prepayment and voluntary termination.

All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(a) *Termination by prepayment.* Notice of the prepayment in full of the mort-

gage or loan shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of prepayment. The insurance contract shall terminate, effective as of the date of prepayment. No adjusted premium charge shall be due the Commissioner on account of such termination by prepayment.

(b) *Termination by voluntary agreement.* Receipt by the Commissioner of a written request, by the mortgagor and mortgagee or lender for termination of the insurance on the mortgage or loan, on a form prescribed by the Commissioner, accompanied by the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met. No voluntary termination charge shall be due the Commissioner on account of such termination by voluntary agreement.

(c) Upon termination of the mortgage or loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the mortgagee or lender for the account of the mortgagor or borrower an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (1) the date of the prepayment or (2) the effective date of the voluntary termination of the contract of insurance.

(d) Notwithstanding any provision in the mortgage instrument, this section shall apply to all mortgage or loan insurance contracts terminated by either prepayment or voluntary termination where: (1) The mortgage is prepaid in full or (2) the Commissioner receives a request for voluntary termination, on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

§ 207.253a Termination of insurance contract.

(a) *Reason for termination.* The happening of any of the following events shall constitute an additional reason for terminating the contract of insurance in cases where the mortgagee has elected to convey the property to the Commissioner:

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(1) The acquisition by the mortgagee of the mortgaged property without conveying it to the Commissioner.

(2) The acquisition of the property at the foreclosure sale by a party other than the mortgagee.

(3) The redemption of the property after foreclosure.

(4) Notice given by the mortgagee after the foreclosure and during the redemption period that it will not tender the property to the Commissioner.

(b) *Notice of termination.* No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section.

(c) *Effective termination date.* The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of insurance the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

[36 FR 24537, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

§ 207.254 Changes in premiums; manner of publication.

Notice of future premium changes will be published in the FEDERAL REGISTER. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate. After the comments have been considered, the Department will publish a final notice announcing the premiums for each program and their effective date. The provisions of paragraph (g) of 24 CFR 207.252 shall apply to any notice of future premium changes published pursuant to this section.

[66 FR 35073, July 2, 2001]

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RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 207.255 Defaults for purposes of insurance claim.

(a)(1) Except as provided in paragraph (b) of this section, the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a “Monetary Event of Default” in certain mortgage security instruments); or

(ii) A material violation of any other covenant under the provisions of the mortgage, if because of such violation, the mortgagee has accelerated the debt, subject to any necessary HUD approval (also referred to as a “Covenant Event of Default” in certain mortgage security instruments).

(2) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(3) If a default as defined in paragraphs (a)(1) and (a)(2) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(4) For the purposes of paragraph (a) of this section, the date of default shall be:

(i) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(ii) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

(5) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a) of this section

shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b) shall apply.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 of the Act (12 U.S.C. 1715z-7), the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage; or

(ii) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(2) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(3) If such defaults, as defined in paragraph (b) of this section, continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(4) Except for mortgages insured under section 232 of the Act, for the purposes of paragraph (b) of this section, the date of default shall be considered as:

(i) The date of the first uncorrected failure to perform a covenant or obligation; or

(ii) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

(5) For mortgages insured under section 232 of the Act, for purposes of this section, the date of default shall be considered as:

(i) The first date on which the borrower has failed to pay the debt when

due as a result of the lender's acceleration of the debt because of the borrower's uncorrected failure to perform a covenant or obligation under the regulatory agreement or security instrument; or

(ii) The date of the first failure to make a monthly payment that subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payments in the order in which they become due.

[76 FR 24370, May 2, 2011, as amended at 77 FR 55135, Sept. 7, 2012]

§ 207.256 Notice to the Commissioner of default.

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(a)(3) or (b)(3), the mortgagee must, within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

[76 FR 24370, May 2, 2011]

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

[76 FR 24370, May 2, 2011]

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

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(b)(1) Except as provided in paragraph (b)(2), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as the mortgage continues to be in default, and payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation, will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 U.S.C. 1715z-7), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(1) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(1) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the

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regulations of paragraph (b)(2) shall apply.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

[76 FR 24370, May 2, 2011]

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

[76 FR 24371, May 2, 2011]

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.*

(1) When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(a)(3) or (b)(3), the mortgagee must, within 45 calendar days after the date of eligibility, such period is referred to as the "Eligibility Notice Period" for purposes of this section, give the Commissioner notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. Notice of this election must be provided to the Commissioner in the manner prescribed in 24 CFR part 200, subpart B. HUD may extend the Eligibility Notice Period at the request of the mortgagee under the following conditions:

(i) The request must be made to and approved by HUD prior to the 45th day after the date of eligibility; and

(ii) The approval of an extension shall in no way prejudice the mortgagee's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner or to

acquire and convey title to the Commissioner within the 45-day period or any extension prescribed by the Commissioner.

(2) For mortgages funded with the proceeds of state or local bonds, Ginnie Mae mortgage-backed securities, participation certificates, or other bond obligations specified by the Commissioner (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third-party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or prepayment premium, in the event of a default during the term of the prepayment lock-out or prepayment premium, and for any mortgage insured under section 232 of the Act, the mortgagee must:

(i) Request a 90-day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate, which HUD may further extend at the written request of the mortgagee;

(ii) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if the Commissioner grants the requested (or a shorter) extension of notice filing deadline;

(iii) Report to the Commissioner at least monthly on any progress in arranging refinancing;

(iv) Cooperate with the Commissioner in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(v) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or prepayment premium; and

(vi) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regu-

lations of paragraph (a)(2) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a)(2) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (a)(2) shall not apply.

(4) *Acknowledgment of election.* For mortgages insured pursuant to section 232 of the Act, if the lender provides notice to the Commissioner of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner, the Commissioner shall, not later than 90 calendar days after the expiration of the Eligibility Notice Period, as defined in paragraph (a)(1) of this section, as the same may have been extended, acknowledge and accept, or reject for cause, pursuant to program requirements, the lender's election, provided that the Commissioner may, in the Commissioner's discretion, extend such 90-day period by no more than an additional 90 calendar days if the Commissioner determines that such an extension is in HUD's interest.

(b) *Assignment of mortgage to Commissioner—* (1) *Timeframe; request for extension.* (i) If the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 calendar days after the date HUD acknowledges the notice of election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under §207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the

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Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

(2) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

(3) *Warranty of mortgage.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(4) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or pri-

ority of the lien created by the chattel security instruments; and

(ii) The mortgagee has a good right to assign the security instruments; and

(iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(5) *Items delivered by mortgagee.* The mortgagee shall deliver to the Commissioner, within 45 days after the assignment is filed for record, the items enumerated below:

(i) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(ii) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the effective date of the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iii) All records, ledger cards, documents, books, papers, and accounts relating to the mortgage transaction.

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) pursuant to paragraph (b)(5) of this section.

(v) Any additional information or data which the Commissioner may require.

(6) *Disposition of cash items.* The following cash items shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed:

(i) Any balance of the mortgage loan not advanced to the mortgagor.

(ii) Any cash held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness.

(iii) All funds held by the mortgagee for the account of the mortgagor received pursuant to any other agreement.

(iv) The amount of any undrawn balance under a letter of credit used in lieu of a cash deposit.

(c) *Conveyance of title to Commissioner.* If the mortgagee elects to acquire and convey title to the Commissioner, the following requirements shall be met:

(1) *Alternative actions by mortgagee.* At any time within a period of 30 days after the date of the notice of such election, the mortgagee shall take one of the alternative actions in paragraph (c) (2) or (3) of this section.

(2) *Foreclosure of mortgage.* The mortgagee may elect to commence foreclosure proceedings. If the laws of the State where the property is located do not permit institution of foreclosure within such 30-day period, foreclosure shall be commenced not less than 30 days after such action can be taken. Under such proceedings, the mortgagee shall take one of the following actions:

(i) Obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor.

(ii) Institute and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom.

(iii) Proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction.

(iv) With the prior approval of the Commissioner, exercise the power of sale under a deed of trust.

(3) *Acquisition of title and possession.* The mortgagee, with the approval of the Commissioner, may elect to acquire possession of, and title to, the mortgaged property by means other than foreclosure. With the prior approval of the Commissioner, title may be transferred directly to the Commissioner.

(4) *Notice of foreclosure.* The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion. Any developments which might delay the consummation of such

proceedings shall be promptly reported to the Commissioner.

(5) *Transfer by mortgagee.* After acquiring title to and possession of the property, the mortgagee shall (within 30 days of such acquisition) transfer title and possession of the property to the Commissioner. The transfer shall be made in such manner as the Commissioner may require. On the date the deed is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(6) *Filing of deed and application.* The mortgagee shall file its application for insurance benefits at the time of filing for record of the deed conveying the property to the Commissioner.

(7) *Deed covenants and documents.* The deed conveying the property to the Commissioner shall contain covenants satisfactory to the Commissioner. The original deed shall be forwarded to the Commissioner as soon as received from the recording authority. The following documents shall be forwarded with the deed:

(i) A bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction or by the acceptance of a deed in lieu of foreclosure.

(ii) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction and out of the foreclosure proceedings or other means by which the property was acquired.

(iii) An assignment of any claims on account of title insurance and fire or other hazard insurance, except claims which have been released with the prior approval of the Commissioner.

(8) *Title evidence.* Evidence of title, satisfactory to the Commissioner and meeting the requirements of § 207.258a shall be furnished to the Commissioner (without expense to him) within 45 days of the filing for record of the deed conveying the property to him.

(9) *Disposition of cash items.* The provisions of paragraph (b)(4) of this section, relating to the retention or delivery of cash items, shall be applicable to cases

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involving the conveyance of property to the Commissioner.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2535-0061)

[36 FR 24537, Dec. 22, 1971, as amended at 44 FR 8195, Feb. 8, 1979; 50 FR 38786, Sept. 25, 1985; 51 FR 27838, Aug. 4, 1986; 64 FR 4770, Jan. 29, 1999; 76 FR 24371, May 2, 2011; 77 FR 55135, Sept. 7, 2012]

§ 207.258a Title requirements.

(a) *Form of title evidence.* The title evidence submitted with a conveyance of the property to the Commissioner shall be in the form of an owner's policy of title insurance, except that, if an abstract and attorney's opinion were accepted by the Commissioner at the time of insurance, the title evidence may be in such form. The title evidence shall be effective on or after the date of the recording of the conveyance to the Commissioner.

(b) *Content of title evidence.* To be satisfactory to the Commissioner, the title evidence covering the property conveyed to him shall show the same title vested in the Commissioner as was vested in the mortgagor as of the date of the mortgage was filed for record, with the exception of such liens or other matters affecting the title as may be approved by the Commissioner.

§ 207.258b Partial payment of claim.

(a) Whenever the Commissioner receives notice under §207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the mortgagee to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costly to the Federal government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. This determination shall be based upon the findings listed below and such other find-

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ings as the Commissioner deems appropriate:

(1) The mortgagee is entitled, under §207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is, or can at reasonable cost be made, structurally sound;

(4) The management of the project is satisfactory to the Commissioner; and

(5) The default under the insured mortgage was beyond the control of the mortgagor.

(c) Partial payment of a claim under this section shall be made only when:

(1) The project is, or potentially could serve as, a low- and moderate-income housing resource;

(2) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(3) The mortgagee has voluntarily agreed to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(4) The mortgagor has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to assure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash. The Commissioner shall waive the deduction of one percent of the mortgage funds advanced to the mortgagor, provided for in §207.259(b)(2)(iv), with respect to a partial payment of a claim under this section. The items referred

to in §207.258(b)(4) shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner with respect to a partial payment of claim under this section.

(e) Lenders receiving a partial payment of claim following the Commissioner's endorsement of the Mortgage for full insurance under parts 251, 252, or 255 of this chapter, will pay HUD a fee in an amount set forth through FEDERAL REGISTER notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

[50 FR 38786, Sept. 25, 1985, as amended at 61 FR 49037, Sept. 17, 1996]

§ 207.259 Insurance benefits.

(a) *Method of payment.* (1) Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to the Commissioner in accordance with requirements in §207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment.

(2) An insurance claim paid on a mortgage insured under section 223(e) of the National Housing Act shall be paid in cash from the Special Risk Insurance Fund.

(b) *Amount of payment; assignment of mortgage.* If the mortgage is assigned to the Commissioner, the insurance benefits shall be paid in an amount determined as follows:

(1) By adding to the unpaid principal amount of the mortgage, computed as of the date of default, the following items:

(i) The amount of all payments made by the mortgagee for taxes, special assessments and water rates which are liens prior to the mortgage; for insurance on the property; and for any mortgage insurance premiums paid after default.

(ii) An allowance for reasonable payments made by the mortgagee, with the approval of the Commissioner, for the completion and preservation of the property.

(iii) An amount equivalent to the debenture interest which would have been earned on the portion of the in-

surance benefits paid in cash, as of the date such cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§207.256 and 207.258 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section, the following items:

(i) Any amount received by the mortgagee on account of the mortgage after the date of default.

(ii) Any net income received by the mortgagee from the property covered by the mortgage after the date of default.

(iii) The sum of the cash items retained by the mortgagee pursuant to §207.258(b)(6), except the balance of the mortgage loan not advanced to the mortgagor.

(iv) An amount equivalent to 1 percent of the mortgage funds advanced to the mortgagor and not repaid as of the date of default, except that all or part of the 1 percent may be waived by the Commissioner if, at his request and in lieu of foreclosure, the mortgage is assigned to the Secretary.

(v) In the case of a lender receiving insurance benefits for the full Mortgage amount upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR parts 251, 252, or 255, the amount of the fee set forth through FEDERAL REGISTER notice. HUD may, in its discretion, collect this fee rather than deducting the fee from the total of the items computed under paragraph (b)(1) of this section.

(vi) Except for multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w) and under section 242 of the Act (12 U.S.C. 1715z-7), when there is a covenant default as defined in

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§ 207.255(a)(1)(ii) and a mortgagee refuses to comply promptly with the Commissioner's request to accelerate payment pursuant to § 207.257, an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value as of the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

(vii) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(2)(vi) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(2)(vi) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(2)(vi) shall not apply.

(c) *Amount of payment; conveyance of property.* If the property is conveyed to the Commissioner, the insurance benefits shall be paid in an amount determined in accordance with paragraph (b) of this section, except that the item set forth in paragraph (b)(2)(iv) of this section shall not be deducted.

(d) *Issuance of certificate of claim.* In addition to the insurance benefits paid under paragraph (b) or (c) of this section, a certificate of claim shall be issued to the mortgagee.

(1) In the case of an assignment of the mortgage, the certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the amount of the insurance benefits to equal the amount the mortgagee would have received if, on the date of assignment to the Commissioner, the mortgagor had paid in full all obligations under the mortgage. Where a conveyance is involved, there shall also be included in the certificate an allowance in a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition

of the mortgaged property otherwise and in connection with the conveyance of the property to the Commissioner.

(2) The certificate of claim shall provide for an uncompounded annual interest increment of 3 percent to begin as of the date of either assignment or conveyance.

(e) *Issuance of debentures.* Where debentures are issued, they shall meet the following requirements:

(1) Be issued as of the date of default.

(2) Be registered as to principal and interest.

(3) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semi-annual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(4) Mature 20 years from the date thereof.

(5) Be issued in such forms and amounts; and be subject to such terms and conditions; and include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

(6) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

(7) Debentures representing the portion of the claim applicable to an operating loss loan shall bear interest at the rate in effect as of the date the commitment to insure such loan was issued, or as of the date of endorsement for insurance of such loan, whichever rate is the higher, although debentures representing the portion of the claim applicable to the original mortgage may bear interest at a different rate.

(f) *Mortgagee Time Limits for Supplemental Claims for Additional Insurance Benefits.* A mortgagee may not file for any additional payments of its mortgage insurance claim more than six months after the date of final settlement of the insurance claim by the Commissioner. For the purpose of this section, the term final settlement shall mean the payment of the insurance claim (in cash or debentures) or billing for any overpayment of a partial claim that is made by the Commissioner. Final settlement is based upon the submission by the mortgagee of all required documents and information pursuant to part 207 of this chapter.

[36 FR 24537, Dec. 22, 1971, as amended at 41 FR 45829, Oct. 18, 1976; 47 FR 26125, June 17, 1982; 49 FR 24654, June 14, 1984; 51 FR 13142, Apr. 17, 1986; 51 FR 27838, Aug. 4, 1986; 57 FR 55112, Nov. 24, 1992; 59 FR 49816, Sept. 30, 1994; 61 FR 49038, Sept. 17, 1996; 71 FR 18153, Apr. 10, 2006; 76 FR 24371, May 2, 2011; 80 FR 51468, Aug. 25, 2015]

§ 207.259a Waiver of title objection; mortgages formerly Commissioner-held.

If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner.

§ 207.260 Maintenance and inspection of property.

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must

inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

[63 FR 46578, Sept. 1, 1998]

§ 207.261 Capturing excess bond proceeds.

(a) A mortgagee that finances multi-family housing or healthcare facilities insured under Title II of the National Housing Act through the issuance and sale of bonds or bond anticipation notes and uses a project-specific trust indenture agreement, that clearly outlines the project and identifies by project the trust funds established by and administered in accordance with the terms of the trust indenture, shall:

(1) Include the following clause in the trust indenture: In the event of an assignment or conveyance of the mortgage to the Commissioner, subsequent to the issuance of the bonds, all money remaining in all funds and accounts other than the rebate fund, and any other funds remaining under the trust indenture after payment or provision for payment of debt service on the bonds and the fees and expenses of the credit enhancer, issuer, trustee, and other such parties unrelated to the mortgagor (other than funds originally deposited by the mortgagor or related parties on or before the date of issuance of the bonds) shall be returned to the mortgagee.

(2) Upon the Commissioner's payment of an FHA mortgage insurance claim under § 207.259, the mortgagee shall take all legally-entitled actions to enforce the clause required by paragraph (a)(1) of this section and pay the Commissioner any trust funds remaining after discharge by the trustee of all obligations of the trust indenture, no later than 6 months after the date of the Commissioner's final settlement of the FHA mortgage insurance claim.

(b) For purposes of paragraph (a) of this section, the term "rebate fund" means a separate fund established under a contract or agreement for tax-exempt bonds in which amounts (excess interest earnings from the tax-exempt bonds) must be deposited to make rebate payments to the federal government under the Internal Revenue Code.

[79 FR 43933, July 29, 2014]

§ 207.263

RIGHTS IN HOUSING FUND

§ 207.263 Responsibility for servicing.

After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

[57 FR 58350, Dec. 9, 1992]

AMENDMENTS

§ 207.499 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

PART 208—ELECTRONIC TRANSMISSION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATION AND SUBSIDY BILLING PROCEDURES FOR MULTIFAMILY SUBSIDIZED PROJECTS

Sec.

- 208.101 Purpose.
- 208.104 Applicability.
- 208.108 Requirements.
- 208.112 Cost.

AUTHORITY: 12 U.S.C. 1701s, 1715l, 1715z-1; 42 U.S.C. 1437f and 3535(d).

SOURCE: 58 FR 61022, Nov. 19, 1993, unless otherwise noted.

§ 208.101 Purpose.

The purpose of this part is to require owners of subsidized multifamily projects to electronically submit certain data to HUD for the programs listed in § 208.104. This electronically submitted data is required by HUD Forms, Owner's Certification of Compliance with Tenant's Eligibility and Rent Procedure, Worksheets to Compute Tenant Payment/Rent (Form HUD-50059 and 50059 Worksheets), and the Monthly Subsidy Billing Forms, Housing Owner's Certification and Application for Housing Assistance Payments (HUD-

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52670), Schedule of Tenant Assistance Payments Due (HUD-52670A, Part 1), Schedule of section 8 Special Claims (HUD-52670A, Part 2), and Special Claims Worksheets, HUD-52671 A through D), as applicable.

§ 208.104 Applicability.

(a) This part applies to HUD administered subsidized multifamily projects, either insured or non-insured, under:

(1) The section 236 Interest Reduction and Rental Assistance Payments program;

(2) The section 8 Housing Assistance Payments Programs, including, but not limited to, section 8 Housing Assistance Payments Programs for New Construction (24 CFR part 880), section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), section 8 Housing Assistance Payments Program, New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884); Loans for Housing for the Elderly or Handicapped (24 CFR part 885) and section 8 Loan Management and Property Disposition Set-aside program (24 CFR part 886);

(3) The section 221(d)(3) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance program (24 CFR part 221); and

(4) The section 101 Rent Supplement program (24 CFR part 215).

(b) This part applies to those multifamily projects having subsidy contracts, either insured or non-insured, where State housing finance and development agencies and other Public Housing Agencies are the subsidy contract administrator under:

(1) The section 236 Interest Reduction and Rental Assistance Payments program (24 CFR part 236);

(2) The section 8 Housing Assistance Payments Programs, including, but not limited to, section 8 Housing Assistance Payments Program for New Construction (24 CFR part 880), section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), and section 8 Housing Assistance Payments Program, New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884);