

adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property.

[37 FR 16390, Aug. 12, 1972, as amended at 54 FR 38649, Sept. 20, 1989; 59 FR 59648, Nov. 18, 1994]

#### § 203.34 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

#### § 203.35 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor 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 numbers 2502-0059, 2502-0159, and 2502-0268)

[54 FR 39693, Sept. 27, 1989]

#### § 203.36 [Reserved]

#### ELIGIBLE PROPERTIES

#### § 203.37 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21319, May 21, 1984]

#### § 203.37a Sale of property.

(a) *Sale by owner of record*—(1) *Owner of record requirement.* To be eligible for a mortgage insured by FHA, the property must be purchased from the owner of record and the transaction may not

involve any sale or assignment of the sales contract.

(2) *Supporting documentation.* The mortgagee shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b)(12). This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(b) *Time restrictions on re-sales*—(1) *General.* The eligibility of a property for a mortgage insured by FHA is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance (the re-sale date). The mortgagee shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the application for mortgage insurance, in accordance with § 203.255(b).

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be insured by FHA.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage insured by FHA.

(ii) However, HUD will require that the mortgagee obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The mortgagee may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required under § 203.37a(b)(3) at 50 to 150 percent over the original purchase price. HUD will revise this level by

## § 203.38

FEDERAL REGISTER notice with a 30 day delayed effective date.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.*

(i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum mortgage amount under §203.18. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

(iv) HUD will announce its determination to require additional value documentation through issuance of a FEDERAL REGISTER notice. The requirement for additional value documentation may be established either on a nationwide or regional basis. Further, the FEDERAL REGISTER notice will specify the percentage increase in the re-sale price that will trigger the need for additional documentation, and will specify the acceptable types of documentation. The FEDERAL REGISTER notice may also exclude re-sales of less than a specific dollar amount from the additional value documentation requirements. Any such FEDERAL REGISTER notice, and any subsequent revisions, will be issued at least thirty days before taking effect.

(v) The level at which additional documentation is required under §203.37a(b)(4) shall supersede that under §203.37a(b)(3).

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(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage insured by FHA.

(c) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(d) *Sanctions and indemnification.* Failure of a mortgagee to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan, or seeking other appropriate remedies under 24 CFR part 25.

[68 FR 23375, May 1, 2003, as amended at 69 FR 77116, Dec. 23, 2004; 71 FR 33142, June 7, 2006]

### § 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property one or more dwellings

designed principally for residential use for not more than four families.

[61 FR 36264, July 9, 1996]

**§ 203.39 Standards for buildings.**

The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

**§ 203.40 Location of property.**

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

[49 FR 12697, Mar. 30, 1984, as amended at 61 FR 36264, July 9, 1996]

**§ 203.41 Free assumability; exceptions.**

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to mortgagor efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

(i) Two years experience as a provider of low- or moderate-income housing;

(ii) A voluntary board; and

(iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of free assumability with no restrictions.* A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) *Exception for eligible governmental or nonprofit programs.* Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) *Exception for eligible governmental or nonprofit programs—specific policies.* For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgaged or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor may be required to pay a portion of the sales proceeds to a governmental body or an eligible nonprofit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 203.45 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, rights under an option to purchase, pre-emptive rights to purchase or rights of

first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or organization approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only to the extent necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) The mortgagor for a rehabilitation loan insured under § 203.50 of this part may hold title subject to a condition subsequent, provided that the holder of the right of entry for condition broken also executes the mortgage, and that the right is exercisable only for failure by the mortgagor to complete the rehabilitation or occupy the property as agreed by the mortgagor.

(8) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt

bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 203.17(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on certain Indian land or Hawaiian home lands under sections 247 and 248 of the National Housing Act and §§ 203.43h and 203.43i of this part, or on property in the Northern Mariana Islands or American Samoa, shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

[58 FR 42648, Aug. 11, 1993; 59 FR 15112, Mar. 31, 1994]

#### § 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, or group of similar rental properties, in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has

been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The State or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

[56 FR 27692, June 17, 1991, as amended at 61 FR 36264, July 9, 1996]

#### § 203.43 Eligibility of miscellaneous type mortgages.

(a) A mortgage which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Law 9, 73 or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, or any housing (including any property acquired, held or constructed in connection with such housing or to

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serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, OH; Greenbelt, MD; and Greendale, WI, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, WA, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder Canyon Project Act of December 21, 1928, as amended and supplemented, located within the Boulder City municipal area; or

(4) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing (including any property acquired, held, or constructed in connection therewith or to serve the inhabitants thereof) pursuant to the Atomic Energy Community Act of 1955, as amended: *Provided*, That such insurance shall be issued without regard to any preferences or priorities except those prescribed by the National Housing Act or the Atomic Energy Community Act of 1955, as amended; or

(5) Executed in connection with the sale by a State or municipality, or an agency, instrumentality, or political subdivision of either, of a project consisting of any permanent housing (including any property acquired, held or constructed in connection therewith or to serve the inhabitants thereof), constructed by or on behalf of such State, municipality, agency, instrumentality or political subdivision, for the occupancy of veterans (persons who have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to July 26, 1947, or on or after June 27, 1950, and prior to February 1,

1955) their families and others: *Provided*, That the principal obligation of a mortgage referred to in this paragraph shall not exceed 90 percent of the appraised value of the mortgaged property; or

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section.

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(1)(i) Except as provided by paragraph (c)(1)(ii) of this section, the refinancing mortgage must be in an amount that does not exceed the least of (A) the original principal amount of the existing mortgage; (B) the sum of the outstanding principal balance of the existing mortgage, plus loan closing charges approved by the Commissioner; or (C) in the case of an eligible non-occupant mortgagor (as defined in §203.18(f)), the outstanding balance of the existing mortgage.

(ii) In the case of graduated payment mortgages insured under section 203 of the Act pursuant to section 245 (a) or (b) of the Act (§203.45 or §203.46 [as in effect immediately before its removal at 52 FR 32754, published August 28, 1987]), the refinancing mortgage must have a principal amount that does not exceed the outstanding balance of the existing mortgage.

(iii) If a one-time mortgage insurance premium (MIP) was financed as part of the existing mortgage referred to in paragraphs (c)(1) (i) and (ii) of this section, the amount of the premium refund to which the mortgagor is entitled must be deducted in determining the original principal amount and the unpaid principal balance of the existing mortgage under paragraph (c)(1)(i) of this section and the outstanding balance of the existing mortgage under paragraph (c)(1)(ii) of this section. However, the maximum amount of the

refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the one-time MIP (if any) associated with the refinancing mortgage;

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years;

(3) The mortgage must result in a reduction in regular monthly payments by the mortgagor, except:

(i) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy the dwelling as a principal residence or secondary residence, as these terms are defined in §203.18(f); or

(ii) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than \$50. In the case of a graduated payment mortgage, the reduction in regular monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed.

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(5) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(d)-(f) [Reserved]

(g) The provisions of §203.28 shall not apply to mortgages insured under this section.

(h) The provisions of §203.38 shall not apply to mortgages of the character described in paragraph (b) of this section and at the time any such mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than eight families.

(i)-(j) [Reserved]

(k) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the National Housing Act.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 30602, May 8, 1980; 47 FR 29525, July 7, 1982; 52 FR 4139, Feb. 10, 1987; 52 FR 37287, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987; 53 FR 8880, Mar. 18, 1988; 55 FR 34805, Aug. 24, 1990; 55 FR 38033, Sept. 14, 1990; 61 FR 36264, July 9, 1996]

**§203.43a Eligibility of mortgages covering housing in certain neighborhoods.**

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

(d) For restrictions against approving mortgage insurance for a certain category of newly legalized alien, see 24 CFR part 49.

[36 FR 24508, Dec. 22, 1971, as amended at 55 FR 18493, May 2, 1990]

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**§ 203.43b [Reserved]**

**§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.**

A mortgage involving a dwelling unit in a cooperative housing development which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(n) of the National Housing Act.

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

(b) As used in connection with the insurance of mortgages under this section and § 203.437 of this part: (1) The term *mortgage* shall mean a first lien given to secure a loan made to finance the unpaid purchase price of a Corporate Certificate together with the applicable Occupancy Certificate of a cooperative ownership housing corporation in which the permanent occupancy of the dwelling units is restricted to members of such corporation, and may refer both to a security instrument creating a lien, whether called a *mortgage*, *deed of trust*, *security deed* or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) *Corporation* shall mean an organization which holds title to a cooperative housing development which is covered by a blanket mortgage or mortgages insured by FHA under the National Housing Act.

(3) *Corporate Certificate* shall mean such stock certificates, membership certificates, or other instruments which the laws of the jurisdictions in which the cooperative housing development is located require to evidence ownership of a specified interest in the corporation.

(4) *Occupancy Certificate* shall mean a written instrument provided by the corporation to each holder of a Corporate Certificate which grants an exclusive right of possession of a specific dwelling unit in the cooperative housing development.

(5) References in this subpart to a dwelling, residence or property which is sold, conveyed, covered by a mortgage or subject to a lien shall be construed to mean the Corporate Certificate together with the Occupancy Certificate, except that where such references when interpreted in light of section 203(n) of the National Housing Act clearly indicate the intent to be the dwelling unit, such reference shall mean the dwelling unit identified in the Occupancy Certificate.

(c) The organizational documents of the cooperative corporation must provide that: (1) Either the Secretary or a mortgagee under a mortgage insured under this section shall be a member of the cooperative corporation for so long as either owns a Corporate Certificate;

(2) A mortgage insured under this section shall be a first lien upon the property covered by the mortgage;

(3) The Secretary may exercise the voting rights which are attributable to each Corporate Certificate owned by the Secretary;

(4) The Secretary may designate as her proxy an agent for the purpose of exercising the voting rights of the Secretary which are attributable to the corporate Certificate or Certificates owned by the Secretary;

(5) The Secretary may cease making monthly payments attributable to any dwelling unit for which the Secretary owns a Corporate Certificate six months after the Secretary notifies the corporation to sell the Corporate Certificate or upon default by the corporation on the blanket mortgage covering the dwelling unit;

(6) The Secretary or a mortgagee shall not be obligated to make payments to the corporation for any amounts unpaid by a mortgagor under a mortgage insured under this section prior to the date the Secretary or the mortgagee becomes the owner of the Corporate Certificate.

(d) The corporation shall have entered into an agreement with the Secretary and the mortgagee which: (1) Requires that the corporation shall furnish the Secretary with the most recent annual financial report certified to have been based on generally accepted accounting principles and the most



recent monthly or quarterly financial report;

(2) Waives any option or right of first refusal the corporation may have to purchase any Corporate Certificate covered by a mortgage insured under section 203(n) of the National Housing Act, unless the corporation pays the full amount due under such mortgage or pays the full amount of the Secretary's investment if the Secretary is the owner of the Corporate Certificate, whichever is greater.

(3) Except with the approval of the Secretary, waives all authority the corporation may have to approve or reject the buyer of a Corporate Certificate owned by the Secretary or the buyer of a Corporate Certificate covered by a mortgage insured under Section 203(n) of the National Housing Act.

(4) Requires the corporation on notice by the Secretary to act as her agent for a fee to be determined by the Secretary for the limited purposes of:

(i) Selling all Corporate Certificates of the corporation owned by the Secretary;

(ii) Renting and collecting rents on any dwelling unit for which the Secretary owns the Corporate Certificate.

(5) Provides that the Secretary shall not be obligated to make payments to the corporation for outstanding debts of the mortgagor;

(6) Requires the corporation to furnish to a mortgagee or to the Secretary, on request:

(i) A statement, certified by the officer charged with maintenance of the Corporate Certificate Transfer Book, that such book currently shows that the mortgagee or the Secretary is the owner of any Corporate Certificate transferred to the mortgagee or the Secretary; and

(ii) The Occupancy Certificate in the name of the mortgagee or the Secretary.

(7) Requires the corporation to notify the mortgagee, whose name and address has been provided, of any default in corporation fee payments by the mortgagor within 15 days of such default;

(8) Requires the mortgagee to notify the corporation of any default in mort-

gage payments by the mortgagor within 15 days of such default;

(9) Requires the corporation upon notice by the Secretary or the mortgagee, when the Secretary or the mortgagee is the owner of the Corporate Certificate, and for a fee to be determined by the Secretary to evict any person or persons from a dwelling unit identified in the Occupancy Certificate.

(10) Contains such other provisions as the Secretary may require.

(e) The mortgagee shall obtain such security and other undertakings as may be required to establish a first lien on the Corporate Certificate and the Occupancy Certificate under the laws of the State where the Cooperative Housing Development is located.

(f) The mortgage involves a one-family dwelling unit in a cooperative housing development which is covered by a blanket mortgage or mortgages insured under the National Housing Act.

(g) The mortgage shall not exceed the balance remaining after subtracting, from the amount determined under §§ 203.18(a), 203.18(g) and 203.18a of this part, an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

(h) The mortgage shall be executed upon a form conforming to the applicable provisions of this part and shall:

(1) Involve a principal obligation in multiples of \$50.

(2) Come due on the first of the month.

(3) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(4) Be for a term not to exceed 30 years or the remaining term of the blanket mortgage covering the cooperative development or three-quarters of the remaining economic life of the building improvements, whichever is less.

(5) Provide for payments to principal and interest to begin not later than the first day of the month following 60 days from the date the mortgagee's certificate on the commitment was executed.

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(6) Contain a provision stating that the failure of the mortgagor to pay the mortgagor's share of the common expenses or assessments and charges imposed by the corporation as provided in the instruments establishing the cooperative shall be considered a default.

(i) The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

(j) The mortgage must be executed by a mortgagor who intends to be an occupant of the unit.

(k) The mortgagee shall collect from the mortgagor upon the execution of the mortgage: (1) A sum that will be sufficient to pay the mortgage insurance premium for the period beginning on the date of the closing of the loan and ending on the date of the first monthly payment under the mortgage or (2), where applicable, the one-time mortgage insurance premium payable pursuant to § 203.280.

(1) The mortgagee shall upon application for a mortgage insurance commitment provide true copies of the following organizational documents of the cooperative corporation for examination and approval by the appropriate HUD Field Office:

- (1) Certificate of Incorporation;
- (2) Regulatory Agreement;
- (3) By-Laws as amended;
- (4) The financial statements required in paragraph (d)(1) of this section;
- (5) Proposed Occupancy Certificate;
- (6) Proposed Corporate Certificate;

Provided that one or more of the requirements of this paragraph may be waived by the Secretary if the documents have been approved by the Secretary and the mortgagee submits with the application a statement certified by an officer of the cooperative corporation that no changes have been made in the documents since such approval.

[42 FR 40431, Aug. 10, 1977, as amended at 45 FR 29278, May 2, 1980; 45 FR 76377, Nov. 18, 1980; 48 FR 12085, Mar. 23, 1983; 48 FR 28804, June 23, 1983; 49 FR 23584, June 6, 1984; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 53 FR 34282, Sept. 6, 1988; 56 FR 24631, May 30, 1991; 58 FR 41002, July 30, 1993]

**§ 203.43d Eligibility of mortgages in certain communities.**

Notwithstanding any other requirements of this subpart, a mortgage covering a one- to four-family dwelling occupied by the mortgagor as a principal residence (as defined in § 203.18(f)(1)) is eligible for insurance if the following requirements are met:

(a) The property is located in a community where the Secretary determines that:

(1) Temporary adverse economic conditions exist throughout the community as a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, or Nation;

(2) Such ownership claims are reasonably likely to be settled, by court action or otherwise;

(3) As a direct result of the community's temporarily impaired economic condition, owners of homes in the community occupied as principal residences (as defined in § 203.18(f)(1)) have been involuntarily unemployed or underemployed and have, thus, incurred substantial reductions in income that significantly impair their ability to continue timely payment of their mortgages;

(4) As a result, widespread mortgage foreclosures and distress sales of homes are likely in the community; and

(5) Fifty or more individuals were joined as parties defendant or were members of a defendant class prior to December 31, 1976 in litigation involving claims to ownership of land in the community by an American Indian tribe, band or Nation.

(b) The mortgagor, as a direct result of the community's temporarily impaired economic condition, has been involuntarily unemployed or underemployed and has thus incurred a substantial reduction in income which significantly impairs the owners ability to continue timely payment of the mortgage.

(c) The mortgagee certifies that the security instrument has been recorded and is a good and valid first lien on the property except for the claims specified in paragraph (a)(1) of this section.

(d) The mortgagee agrees upon insurance of the mortgage to assign such mortgage to the Secretary within 30

days from the date of the issuance of the insurance certificate and if such assignment does not take place, the contract of insurance is terminated and becomes null and void.

(e) Any individual, organization, institution or governmental agency shall be considered a mortgagee for the purposes of this section.

(f) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 203(o) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

(g) The mortgage was executed and filed for record on or before October 12, 1977.

[42 FR 57434, Nov. 2, 1977, as amended at 55 FR 34805, Aug. 24, 1990]

**§ 203.43e Eligibility of mortgages covering houses in federally impacted areas.**

(a) A mortgage executed in connection with the construction, repair, rehabilitation or purchase of property located near any installation of the Armed Forces of the United States in federally impacted areas shall be eligible for insurance pursuant to this part if the Secretary finds the following additional requirements are met:

(1) The benefits to be derived from such use outweigh the risk of probable cost to the Government; and

(2) The Secretary of Defense certifies that there is no intention to curtail substantially the personnel assigned or to be assigned to such installation.

(b) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 238(c) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

[42 FR 57434, Nov. 2, 1977]

**§ 203.43f Eligibility of mortgages covering manufactured homes.**

A mortgage covering a one-family manufactured home (as defined in 24 CFR 3280.2(a)(16)) that meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance pursuant to this subpart.

(a) The manufactured home, when erected on site, shall have floor space area of not less than four hundred square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8.

(b) The mortgage shall cover the manufactured home and site, shall constitute a mortgage on a property classified and taxed as real estate, and shall have a term of not more than 30 years from the date of the beginning of amortization.

(c) In the case of a manufactured home which has not been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(i) The manufactured home shall be erected on a site-built permanent foundation that meets or exceeds applicable requirements of the Minimum Property Standards for One- and Two-Family Dwellings, 4900.1 (see 24 CFR 200.929(b)(1)) (MPS) and shall be permanently attached thereto by anchoring devices adequate for all loads identified in the MPS. The towing hitch or running gear, which includes axles, brakes, wheels and other parts of the chassis that operate only during transportation, shall have been removed. The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the MPS.

(ii) The space beneath the manufactured home shall be enclosed by continuous foundation-type construction designed to resist all forces to which it is subject without transmitting forces to the building superstructure. The enclosure shall be adequately secured to the perimeter of the manufactured home and be constructed of materials that conform to MPS requirements for foundations.

(iii) The manufactured home shall have an overall coefficient of heat transmission ("U<sub>o</sub>" value) calculated in accordance with the procedures of

§ 203.43g

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NFPA 501 BM-1976 (“Mobile Home Heating, Cooling Load Calculations”) that does not exceed the following for all locations within the following climatic zones:

Zone I.....	.145
Zone II.....	.099
Zone III <sup>1</sup> .....	.087

NFPA 501 BM-1976 is incorporated by reference and is issued by and available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(iv) The manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(v) The conditions of §203.18(a)(2) (i) and (ii) of this subpart shall not apply to construction of the manufactured home but shall be applicable to improvement of the site, including construction of the site-built foundation.

(vi) Section 203.14 of this subpart is modified to the extent provided in this paragraph. Applications relating to insurance of mortgages under this paragraph (c) must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer’s warranty on a form prescribed by the Commissioner, which shall provide that the manufacturer’s warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to the Commissioner warranting that the manufactured home, the foundation, positioning and anchoring of the manufactured home to its permanent foundation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or

changes and variations therein which have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a double-wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser’s receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(d) In the case of a manufactured home which has been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(i) The manufactured home shall be permanently anchored to and supported by permanent footings and shall have permanently installed utilities that are protected from freezing. The space beneath the manufactured home shall be a properly enclosed crawl space.

(ii) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing—One to Four Family Living Units (Handbook 4905.1). The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.

(iii) The manufactured home shall have been occupied only at the location subject to the mortgage sought to be insured.

[48 FR 7735, Feb. 24, 1983, as amended at 61 FR 36264, July 9, 1996]

§ 203.43g Eligibility of mortgages in certain communities.

(a) A mortgage which meets the requirements of this subpart shall be eligible for insurance without regard to the limitation in this part relating to

<sup>1</sup>Zone III includes Alaska, Montana, Wyoming, North and South Dakota, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, and Vermont.

marketability of title under the following conditions:

(1) The mortgagor is to occupy the dwelling as a principal residence (as defined in §203.18(f)(1)).

(2) The defect or potential defect in title is a direct and primary result of outstanding claims to ownership of land in the community by an American Indian tribe, band, group or Nation.

(3) Fifty or more individual owners were joined as parties defendant or were members of a defendant class before April 1, 1980 in litigation involving claims to ownership of land in the community in which the property is located by an American Indian tribe, band, group or Nation pursuant to a dispute involving the Articles of Confederation, the Trade and Intercourse Act of 1790 or any similar State or Federal law.

(4) Such ownership claims are reasonably likely to be settled by court action or otherwise.

(5) Temporary adverse economic conditions exist throughout the community as a direct and primary result of such claims.

(b) Mortgages complying with the requirements of this subpart as modified by this section shall be the obligation of the Special Risk Insurance Fund.

[49 FR 21319, May 21, 1984, as amended at 55 FR 34805, Aug. 24, 1990]

**§203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.**

A mortgage covering a one- to four-family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian Tribe or on a leasehold estate, by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

(a) *Exemptions.* (1) The provisions of subparts I, J, and M of part 200, and §203.30, shall not apply to approval of mortgagors for mortgages insured

under this section if the Indian tribe to which the prospective mortgagor belongs is subject to the Indian Civil Rights Act.

(2) In the case of an Indian tribe which is not subject to the Indian Civil Rights Act, the authorities cited in paragraph (a)(1) of this section shall apply, but any preference in the tribe's approval of the sale or assumption of a lease and mortgage under this section in favor of an eligible Indian over a non-Indian shall not be considered to be a violation of subpart I, J or M.

(b) *Eviction procedures.* Before HUD will insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

(c) *Approval of lease and mortgage.* The lease must be on a form prescribed by HUD.

The mortgage must be on a form which meets the requirements of §203.17(a)(2). Before HUD will insure any mortgage under this section, the mortgagee must demonstrate that the Bureau of Indian Affairs, U.S. Department of Interior, has approved both the lease and mortgage.

(d) *Construction advances.* The Commissioner may issue a commitment for the insurance of advances made during construction and a Direct Endorsement mortgagee may request insurance of a mortgage that will involve the insurance of advances made during construction. The Commissioner will insure advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgage shall be a first lien on the leasehold;

(2) The mortgagor and the mortgagee execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made;

(3) The advances are made only as provided in the commitment or the approval by the Direct Endorsement underwriter;

(4) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow

for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement;

(5) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor; and

(6) The Secretary had determined that no feasible financing alternative is available.

(e) *Assumption or sale of leasehold.* The form of lease must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Secretary through foreclosure of the insured mortgage. A mortgagee other than the Secretary must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Secretary, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is insured or held by the Secretary.

(f) *First lien.* The first lien requirement under this part is implemented where the mortgage is filed in the State recording system and is a first lien under that system, even though the leasehold interest securing the mortgage is located on Indian land and filed with Bureau of Indian Affairs, U.S. Department of the Interior. Any tribal government whose courts have jurisdiction to hear foreclosures must also:

(1) Enact a law satisfactory to the Commissioner providing for the satisfaction of FHA-insured and Secretary-held mortgages before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied; or

(2) Enact a law providing that State law shall determine the priority of liens against the property.

(g) *Definitions.* As used in this section and elsewhere in this part, the term:

(1) *Indian* means and individual member of any Indian tribe and that member's family.

(2) *Indian land* means trust or otherwise restricted land (i) as defined by the Secretary of the Interior, over

which an Indian tribe is recognized by the United States as having governmental jurisdiction; (ii) held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (iii) acquired by Alaska natives under the Alaska Native Claims Settlement Act or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(3) *Indian tribe* means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaskan natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code. For purposes of engaging in section 248 insured mortgage transactions under this section, an Indian tribe may act through its duly authorized representative.

(Approved by the Office of Management and Budget under control number 2502-0340)

[51 FR 21871, June 16, 1986, as amended at 53 FR 34282, Sept. 6, 1988; 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996]

**§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.**

(a) *Eligibility.* A mortgage on a home-  
stead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act (12 U.S.C. 1715z-12) if the mortgagor is a native Hawaiian who will occupy it as a principal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e is not authorized under this section.

(b) *Exemptions from other regulations.* The provisions of subparts I, J, and M of part 200, and § 203.30, to the extent that these provisions would otherwise prohibit preferences in favor of Native Hawaiians in the leasing, sale or other

disposition of Hawaiian home lands, do not apply to mortgages insured pursuant to section 247 of the National Housing Act. The first lien requirement contained in §203.17 also does not apply to mortgages insured pursuant to section 247 of the National Housing Act.

(c) *Definitions.* (1) *Department of Hawaiian Home Lands* (DHHL) is a Department of the State of Hawaii responsible for management of Hawaiian home lands for the benefit of native Hawaiians.

(2) Hawaiian home lands means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 5).

(3) Native Hawaiian means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian islands before January 1, 1778, or, in the case of an individual who is awarded an interest in a lease of Hawaiian home lands through transfer or succession, such lower percentage as may be established for such transfer or succession under section 208 or 209 of the Hawaiian Homes Commission Act of 1920 (42 Stat.111), or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 5).

(d) *Conditions for insurance.* Mortgages will be eligible for insurance under this section, according to the procedures in §§203.5, 203.6, or 203.7 (as applicable), only where the Department of Hawaiian Home Lands:

- (1) Will be a comortgagor;
- (2) Guarantees or reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or
- (3) Offers other security acceptable to the Secretary.

(e) *Acceptable security.* Any agreement by the Secretary to accept alternative security under paragraph (d)(3) of this section must contain provisions de-

signed to ensure that the insurance of mortgages under this section has a neutral impact on the appropriate insurance funds. These provisions may require the Department of Hawaiian Home Lands to make an initial deposit of funds with HUD and to maintain additional funds in reserve for subsequent deposits with HUD. The initial and subsequent deposits shall be used to pay obligations incurred by HUD in connection with the insurance of mortgages under this section and any associated costs, including refunds of insurance premiums to mortgagors. If the Department of Hawaiian Home Lands agrees to make deposits in amounts acceptable to HUD, then the Secretary may agree to use a portion of the premiums received for insurance of mortgages under this section solely for payment of such obligations and associated costs.

(f) *Recordation.* The mortgagee must certify that the mortgage has been recorded with the Department of Hawaiian Home Lands.

(g) *Construction advances.* Advances made by the mortgagee during construction are eligible for insurance, according to the procedures in §§203.5, 203.6, or 203.7 (as applicable), if the Secretary determines that no feasible financing alternative is available and if:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by the Secretary, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment or the approval by the Direct Endorsement or Lender Insurance underwriter;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(h) *Form of lease.* The form of lease must be approved by both HUD and the Department of Hawaiian Home Lands

(DHHL). The lease may not be terminated by DHHL without the approval of the Secretary while the mortgage is insured or held by the Secretary.

(i) *Eligibility of mortgagor.* In addition to the eligibility requirements contained in this subpart, possession of a lease of Hawaiian home lands issued under section 207(a) of the Hawaiian Homes Commission Act of 1920 (42 Stat. 110) that has been certified by the Department of Hawaiian Home Lands as being valid, current, and not in default, shall be sufficient to certify eligibility to receive a mortgage to be insured under this section.

(Approved by the Office of Management and Budget under control number 2502-0358)

[52 FR 8067, Mar. 16, 1987, and 52 FR 28470, July 30, 1987, as amended at 53 FR 8881, Mar. 18, 1988; 53 FR 34282, Sept. 6, 1988; 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996; 62 FR 30226, June 2, 1997; 69 FR 33525, June 15, 2004]

**§ 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.**

A mortgage on a leasehold estate covering a one- to four-family residence located on the Allegany Reservation of the Seneca Nation of Indians in the State of New York is eligible for insurance if the mortgage meets the requirements of this subpart as modified by this section.

(a) *Title.* This section applies only to a mortgage which:

(1) Does not meet the requirements of § 203.37;

(2) Is on a leasehold under a lease with a termination date in February 1991, which provides for renewal in accordance with the Act of February 19, 1875 (18 Stat. 330) and the Act of September 30, 1890 (26 Stat. 558).

A mortgage may not be on a leasehold created by a lease which is executed after the effective date of this section as a renewal or replacement of a lease described in paragraph (a)(2) of this section. A mortgage may not be secured by any other right of occupancy created in lieu of a leasehold after the effective date of this section by agreement of the Seneca Nation, court order, law or any other means.

(b) *Provisions of mortgage.* The Secretary will prescribe special mortgage provisions in the form of a mortgage

rider in order better to secure the mortgagee, including:

(1) Authorization for the mortgagee to exercise the option of lease renewal if the mortgagor fails to do so, and to recover from the mortgagor authorized expenses incurred to obtain lease renewal; and

(2) Making a mortgagor failure to take steps necessary for less renewal an event of default under the mortgage.

(c) *Secretary agreement with mortgagor.* The mortgagor must enter into an agreement with the Secretary and such other parties as the Secretary may require regarding actions to be taken to obtain either a renewal of the lease or a new lease.

(d) *Certification.* The borrower must certify that it has received disclosures, in a form prescribed by the Secretary, explaining the status of the lease and the consequences of nonrenewal. The disclosure shall include a discussion of the fact that a mortgagor who does not obtain a lease renewal and loses the right of occupancy will remain liable for the outstanding balance of the mortgage.

(e) *Purchase for principal residence.* The mortgagor must be a purchaser who intends to occupy the property as a principal residence (as defined in § 203.18(f)(1)), or a current owner-occupant refinancing a mortgage which is now due or which will become due before the lease termination date in February 1991.

(f) *Relationship of income to housing expense.* For purposes of § 203.33(a), the total prospective housing expense shall include the Secretary's estimate of future lease payments during the term of the mortgage rather than lease payments in effect at the time of application.

(g) *Suspension of commitments.* The Secretary may suspend the issuance of commitments to insure mortgages under this section, for the entire period during which commitments could otherwise be issued for insurance under this section (i.e., through February 18, 1991) or for such lesser period as the Secretary may specify, by providing thirty days notice of suspension in the FEDERAL REGISTER. Regardless of its duration, a suspension to be imposed



prior to February 19, 1990, will be based on a determination by the Secretary that, for mortgages insured during a specified period, the rate of monetary defaults (as measured by 90 day delinquencies) for mortgages insured under this section exceeds the rate of such monetary defaults for all insured mortgages on one- to four-family properties in the State of New York. A suspension to be imposed after February 18, 1990, will be based on a consideration by the Secretary of the probable costs to the Special Risk Insurance Fund of further commitments to insure under this section, as measured by such factors as the current and projected rate and amount of claims payments, together with other significant current and projected costs as determined by the Secretary, including a review of the actual and projected monetary default rate (as measured by 90 day delinquencies) and the actual and projected rate of lease renewal through negotiation and arbitration.

[52 FR 48201, Dec. 21, 1987, and 53 FR 9869, Mar. 28, 1988, as amended at 54 FR 32970-32971, Aug. 11, 1989; 55 FR 34805, Aug. 24, 1990]

#### § 203.44 Eligibility of advances.

Mortgagees may not make open-end advances under section 225 of the National Housing Act (12 U.S.C. 1715p) in connection with the mortgages insured under this chapter.

[61 FR 36264, July 9, 1996]

#### § 203.45 Eligibility of graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) The mortgage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed by §§203.18, 203.18a, and 203.29; or,

(2) An amount which, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed 97 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance. However, if the mortgagor is a veteran, the mortgage amount, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed the applicable limits prescribed for veterans in §203.18(a).

(d) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest may increase annually for a period of five years at a rate of 2½ percent, 5 percent or 7½ percent or for a period of ten years at a rate of 2 percent or 3 percent. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(e) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(f) Sections 203.21 and 203.44 shall not apply to this section.

(g) This section applies only to mortgagors who are to occupy the dwelling as a principal residence (as defined in §203.18(f)(1)). It does not apply to a mortgage that meets the requirements of §§203.18(a)(4), 203.18 (c) through (e), 203.43, 203.43a, 203.43j, or 203.49.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to

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section 245 of the National Housing Act.

[41 FR 42949, Sept. 29, 1976, as amended at 45 FR 33966, May 21, 1980; 45 FR 56341, Aug. 24, 1980; 49 FR 19453, 19458, May 8, 1984; 49 FR 23584, June 6, 1984; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 55 FR 34805, Aug. 24, 1990; 58 FR 41003, July 30, 1993]

### § 203.47 Eligibility of growing equity mortgages.

A mortgage containing provisions for accelerated amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart, subject to compliance with the additional requirements of this section.

(a) The mortgage must contain complete amortization provisions, satisfactory to the Secretary, requiring monthly payments by the mortgagor not in excess of the mortgagor's reasonable ability to pay, as determined by the Secretary.

(b) The mortgage must contain a provision setting forth the payments required for principal and interest in each year of the mortgage.

(c) The monthly payments for principal and interest for the initial year, or such other initial period as the commissioner may approve, shall be determined on the basis of a 30-year level payment amortization schedule. Subsequent monthly payments for principal and interest may increase annually, biennially or at such other interval that is greater than one year, as the Commissioner may approve. The subsequent periodic increases may be up to five percent above the payments for principal and interest for the previous period.

(d) No later than at the time that a loan application is offered to a prospective mortgagor, the mortgagee shall explain fully to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) The mortgage amount shall not exceed the limits prescribed by § 203.18, 203.18a, or 203.29.

(f) Sections 203.21 and 203.44 shall not apply to this section.

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(g) This section shall not apply to a mortgage which meets the requirements of § 203.43, § 203.43a, or § 203.49.

(h) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 245(a) of the National Housing Act.

[49 FR 19453, May 8, 1984, as amended at 49 FR 23584, June 6, 1984; 53 FR 8881, Mar. 18, 1988; 58 FR 41003, July 30, 1993]

### § 203.49 Eligibility of adjustable rate mortgages.

A mortgage containing the provisions for periodic adjustments by the mortgagee in the effective rate of interest charged shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section. This section shall apply only to mortgage loans described under sections 203(b), 203(h) and 203(k) of the National Housing Act.

(a) *Types of mortgages insurable.* The types of adjustable rate mortgages that are insurable are those for which the interest rate may be adjusted annually by the mortgagee, beginning after one, three, five, seven, or ten years from the date of the mortgagor's first debt service payment.

(b) *Interest-rate index.* Changes in the interest rate charged on an adjustable rate mortgage must correspond either to changes in the one-year London Interbank Offered Rate (LIBOR) or to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year. Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

(c) *Amortization provisions.* The mortgage must contain amortization provisions satisfactory to the Secretary, allowing for periodic adjustments in the rate of interest charged corresponding to changes in the interest rate index.

(d) *Frequency of interest rate changes.* (1) The interest rate adjustments must occur annually, calculated from the date of the mortgagor's first debt service payment, except that, for these types of mortgages, the first adjustment shall be no sooner or later than the following:

(i) One-year adjustable rate mortgages—no sooner than 12 months or later than 18 months;

(ii) Three-year adjustable rate mortgages—no sooner than 36 months or later than 42 months;

(iii) Five-year adjustable rate mortgages—no sooner than 60 months or later than 66 months;

(iv) Seven-year adjustable rate mortgages—no sooner than 84 months or later than 90 months; and

(v) Ten-year adjustable rate mortgages—no sooner than 120 months or later than 126 months.

(2) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.*, base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(e) *Method of rate changes.* Interest rate changes may only be implemented through adjustments to the mortgagor's monthly payments.

(f) *Magnitude of changes.* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. The first adjustment to the contract interest rate shall take place in accordance with the schedule set forth under paragraph (d) of this section. Thereafter, for all adjustable rate mortgages, the adjustment shall be made annually and shall occur on the anniversary date of the first adjustment, subject to the following conditions and limitations:

(1) For one- and three-year adjustable rate mortgages, no single adjustment to the interest rate shall result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more

than five percentage points from the initial contract interest rate.

(2) For five-, seven-, and ten-year adjustable rate mortgages, no single adjustment to the interest rate shall result in a change in either direction of more than two percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of two percentage points may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than six percentage points from the initial contract rate.

(3) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(g) *Pre-Loan Disclosure.* The mortgagee is required to make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(h) *Annual disclosure.* At least 25 days before any adjustment to a mortgagor's monthly payment may occur, the mortgagee must advise the mortgagor of the new mortgage interest rate, the amount of the new monthly payment, the current index interest rate value, and how the payment adjustment was calculated.

(i) *Cross-reference.* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) do not apply to this section. This section does not apply to a mortgage that meets the requirements of §§203.18(a)(4) (mortgagors of secondary residences), 203.18(c) (eligible non-occupant mortgagors), 203.18(d) (outlying area properties), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e

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(mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), or 203.47 (growing equity mortgages).

(j) *Aggregate amount of mortgages insured.* The aggregate number of adjustable rate mortgages insured pursuant to this section and 24 CFR part 234 in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under Title II of the National Housing Act during the preceding fiscal year.

(k) *Insurance authority.* Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 251 of the National Housing Act.

[49 FR 23584, June 6, 1984, as amended at 53 FR 8881, Mar. 18, 1988; 54 FR 111, Jan. 4, 1989; 55 FR 34805, Aug. 24, 1990; 61 FR 36264, July 9, 1996; 69 FR 11501, Mar. 10, 2004; 70 FR 16082, Mar. 29, 2005; 72 FR 40050, July 20, 2007]

### § 203.50 Eligibility of rehabilitation loans.

A rehabilitation loan which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(k) of the National Housing Act.

(a) For the purpose of this section:

(1) The term *rehabilitation loan* means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing:

(i) The rehabilitation of an existing one-to-four unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(2) The term *rehabilitation* means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary and improvements for accessibility to the handicapped) or repair of a structure, or facilities in connection with a structure, and may in-

clude the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project.

(b) The provisions of § 203.18 (except as otherwise provided in paragraphs (f) (1) and (2) of this section) and § 203.43c shall not apply to loans insured under this section.

(c) The loan shall cover a dwelling which was completed more than one year preceding the date of the application for mortgage insurance and which was approved for mortgage insurance prior to the beginning of rehabilitation.

(d)(1) The buildings on the mortgaged property must, upon completion of rehabilitation, conform with standards prescribed by the Secretary.

(2) Improvements or repairs made under this section must be designed to meet cost-effective energy conservation standards prescribed by the Secretary.

(e) The loan transaction shall be an acceptable risk as determined by the Commissioner.

(f) The loan may not exceed an amount which, when added to any outstanding indebtedness of the borrower that is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1)(i) The limits prescribed in §§ 203.18(a) (1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1)); (ii) the limits prescribed in §§ 203.18(a) (1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2)); (iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in §§ 203.18(a) (1) and (3), as the Secretary may prescribe (in the case of an eligible non-occupant mortgagor as defined in § 203.18(f)(3)); (iv) the limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation; or

(2) The limits prescribed in the authorities listed in this paragraph (f),

based upon 110 percent of the Commissioner's estimate of the value of the property after rehabilitation.

(g) The loan limitation prescribed by paragraph (f)(2) of this section shall not be applicable where a unit of local government demonstrates to the satisfaction of the Commissioner that:

(1) The property is located within an area which is subject to a community sponsored program of concentrated redevelopment or revitalization, and,

(2) The loan limitation prescribed by paragraph (f)(2) of this section, prevents the utilization of the program to accomplish rehabilitation in the subject area, and,

(3) The interests of the mortgagor and the Commissioner are adequately protected.

(h) Insurance may be available for advances made during rehabilitation or upon completion of rehabilitation, according to the procedures in §203.5, 203.6, or 203.7 (as applicable).

(i) Rehabilitation loans which do not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property need not be a first lien on the property but shall not be junior to any lien other than a first mortgage. The provisions of §§203.15, 203.19, 203.23, 203.24, 203.26, and 203.43j shall not be applicable to such loans.

(j) The Commissioner may insure advances made by the mortgagee during rehabilitation if the following conditions are satisfied:

(1) The mortgage shall be a first lien on the property.

(2) The mortgagor and the mortgagee shall execute a rehabilitation loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made.

(3) The advances shall be made as provided in the rehabilitation loan agreement.

(4) The principal amount of the mortgage shall be held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor or his creditors as provided in the rehabilitation loan agreement.

(5) The loan shall bear interest at the rate prescribed in §203.20 on the

amount advanced to the mortgagor or its creditors, and the amount held in an account or trust for the benefit of the mortgagor.

(6) If paragraph (k) of this section applies, the rehabilitation loan agreement shall restrict advancement to the mortgagor, or to creditors other than the mortgagee, so that any loan proceeds in excess of the 85 percent set forth in paragraph (f)(1)(iii) of this section shall not be advanced until the property is sold to a purchaser described in paragraph (k)(2) of this section.

(k) In the case of a dwelling (1) to be occupied neither as a principal residence nor as a secondary residence and (2) where the loan is approved for a limit higher than the 85 percent set forth in paragraph (f)(1)(iii) of this section, the eligible non-occupant mortgagor (as defined in §203.18(f)(3)) shall certify to the Commissioner that:

(1) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before a due date approved by the Commissioner, except with the prior written approval of the Commissioner;

(2) The mortgagor agrees that, if the property is not sold before a due date approved by the Commissioner to a purchaser, acceptable to the Commissioner, who will occupy the property, assume personal liability, and agree to pay the mortgage indebtedness, any amount held in escrow, trust, or special account under paragraph (j) of this section will be applied in reduction of the outstanding principal amount of the mortgage as of the due date approved by the Commissioner;

(3) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph (k), shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

(1) *Rehabilitation loan consultants.* HUD maintains a list of qualified consultants, in accordance with §§200.190 through 200.193 of this title. When the

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borrower elects to use the services of a consultant, the lender must select a consultant on the list to perform one or more of the following tasks:

(1) Conduct a preliminary feasibility analysis before or after the submission of a sales contract;

(2) Prepare the cost estimate, work write-up, and architectural exhibits required for the rehabilitation of the property;

(3) Conduct a plan review; and

(4) Conduct the draw inspections for the release of funds during the construction phase of the project.

(m) With regard to loans under this section executed on or after December 27, 2005, the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

[45 FR 33966, May 21, 1980, as amended at 45 FR 76378, Nov. 18, 1980; 50 FR 19926, May 13, 1985; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 55 FR 34806, Aug. 24, 1990; 57 FR 58347, Dec. 9, 1992; 58 FR 41003, July 30, 1993; 59 FR 13882, Mar. 24, 1994; 62 FR 30226, June 2, 1997; 67 FR 52381, Aug. 9, 2002; 70 FR 37156, June 28, 2005]

### § 203.51 Applicability.

The provisions of §§ 203.18 (a), (c), (d), (e)(1), and (f); § 203.29(c); § 203.31; § 203.43(c); 203.43(k); § 203.43c(g); § 203.43d(a), § 203.43g(a)(1); § 203.43j(e); § 203.45(g); § 203.49(h); § 203.50(f); and § 203.50(k) of this subpart apply to mortgages insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after September 24, 1990; or

(2) In accordance with the Direct Endorsement program, if the underwriter of the mortgage signs the appraisal report or master appraisal report for the property on or after September 24, 1990; or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after September 24, 1990.

[55 FR 34806, Aug. 24, 1990, as amended at 57 FR 58347, Dec. 9, 1992; 61 FR 36453, July 10, 1996]

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### § 203.52 Acceptance of individual residential water purification equipment.

If a property otherwise eligible for insurance under this part does not have access to a continuing supply of safe and potable water without the use of a water purification system, the requirements of this section must be complied with as a condition to acceptance of the mortgage for insurance. The mortgagee must provide appropriate documentation with the submission for insurance endorsement to address each of the requirements of this section.

(a) *Equipment.* Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to the local or state health authority.

(b) *Certification by local (or state) health authority.* A local (or state) health authority certification must be submitted to HUD which certifies that:

(1) A point-of-entry or point-of-use water purification system is currently in operation on the property. If the system in operation employs point-of-use equipment, the purification system must be employed on each water supply source (faucet) serving the property. Where point-of-entry systems are used, separate water supply systems carrying untreated water for flushing toilets may be constructed.

(2) The system is sufficient to assure an uninterrupted supply of safe and potable water adequate to meet household needs.

(3) The water supply, when treated by the equipment, meets the requirements of the local (or state) health authority, and has been determined to meet local or state quality standards for drinking water. If neither state nor local standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(4) There exists a Plan providing for the monitoring, servicing, maintenance, and replacement of the water equipment, which Plan meets the requirements of paragraph (f) of this section.

(c) *Mortgagor notice and certification.*

(1) The prospective mortgagor must have received written notification, before the mortgagor signed a sales contract, that the property has a hazardous water supply that requires treatment in order to remain safe and acceptable for human consumption. The notification to the mortgagor must identify specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(2) The mortgagor must have received, with the notification described in paragraph (c)(1) of this section, a written good faith estimate of the maintenance and replacement costs of the equipment necessary to assure continuing safe drinking water.

(3) A copy of the notification statement (including cost estimates), dated before the date of the sales contract, and signed by the prospective mortgagor to acknowledge its receipt, must accompany the submission for insurance endorsement. If a sales contract is signed in advance of the disclosure required by this paragraph, another sales contract must be executed after the information is provided to the prospective mortgagor and he or she has acknowledged receipt of the disclosure.

(4) The prospective mortgagor must sign a certification, substantially in the form set out in this paragraph (c)(4), at the time the application for mortgage credit approval is signed. This certification must be submitted to HUD:

Mortgagor's Certificate. I hereby acknowledge and understand that the home I am purchasing has a water purification system which I am responsible for maintaining.

I understand that the individual water supply is unsafe for consumption unless the system is operating properly. I am aware that if I do not properly maintain the system, the water supply will not be purified or treated properly, thereby rendering the water supply unsafe for consumption.

I also understand that the Department of Housing and Urban Development does not warrant the condition of the property, will not give me any money for repairs to the water purification system, and has relied upon the local (or state) health authority to assure that the water supply, when processed by properly maintained equipment, is acceptable for human use and consumption.

\_\_\_\_\_  
[Mortgagor's signature and date]

(d) *Service contract.* Before mortgage closing, the mortgagor must enter into a service contract with an organization or individual specifically approved by the local (or state) health authority to carry out the provisions of the required Plan for servicing, maintenance, repair and replacement of the water purification equipment. A copy of the signed service contract must be provided to HUD.

(e) *Escrow for maintenance and replacement.* The mortgagee must establish and maintain an escrow account which provides for the accumulation of funds paid with the mortgagor's monthly mortgage payment adequate to assure proper servicing, maintenance, repair and replacement of the water purification equipment. The amount to be collected and escrowed by the mortgagee shall be based upon information provided by the manufacturer for the maintenance and replacement of the water purification equipment and for other charges anticipated by the service contractor. The initial monthly escrow amount shall be stated in the Plan. Disbursements from the account will be limited to costs associated with the normal servicing, maintenance, repair or replacement of the water purification equipment. Disbursements may only be made to the service contractor or its successor, to equipment suppliers, to the local (or state) health authority for the performance of testing or other required services, or to another entity approved by the health authority. So long as water purification remains necessary and the mortgage is insured by HUD, the mortgagee must maintain the escrow account.

(f) *Approved Plan.* A Plan, in the form of a contract entered into by the mortgagor and mortgagee and approved by the local (or state) health authority, must set out conditions that must be met by the parties as a condition of insurance of the mortgage by HUD. To be approved by the health authority:

(1) The Plan must set forth the respective responsibilities to be assumed by the mortgagor and the mortgagee, as well as the other entities who will

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implement the Plan, i.e., the health authority and the service contractor. In particular:

(i) The Plan must set out the responsibilities of the health authority for monitoring and enforcing performance of the service contractor, including any successor contractor that the health authority may later have occasion to name. By its approval of the Plan, the health authority documents its acceptance of these responsibilities, and the Plan should so indicate;

(ii) The Plan must provide for the monitoring of the operation of the water purification equipment, as well as for servicing (including disinfecting), and for repairing and replacing the system, as frequently as necessary, taking into consideration the system's design, anticipated use, and the type and level of contaminants present. Installation, servicing, repair and replacement of the water purification system must be performed by an individual or organization approved for the purpose by the local (or state) health authority and identified in the Plan. In meeting the requirements of paragraph (f)(1)(ii) of this section, the Plan may incorporate by reference specific terms and conditions of the service contract required under paragraph (d) of this section.

(iii) Under the Plan, responsibility for monitoring the performance of the service contractor and for assuring that the water purification system is properly serviced, repaired, and replaced rests with the local (or state) health authority that has given its approval to the Plan. The Plan must confer on the health authority all powers necessary to effect compliance by the service contractor. The health authority's powers shall include the authority to notify the mortgagor of any noncompliance by the service contractor. The plan must provide that, upon any notification of noncompliance received from the health authority, the mortgagor shall have the right to discharge the service contractor for cause and to appoint a successor organization or individual as service contractor; and

(iv) The Plan must provide for the mortgagor to make periodic escrow payments necessary for the servicing,

maintenance, repair and replacement of the water purification system, and for the mortgagee to disburse funds from the escrow account as required, to the appropriate party or parties.

(2) The Plan must provide that if the dwelling served by the water purification system is refinanced, or is sold or otherwise transferred with a HUD-insured mortgage, the Plan will:

(i) Continue in full force and effect;

(ii) Impose an obligation on the mortgagor to notify any subsequent purchaser or transferee of the necessity for the water purification system and for its proper maintenance, and of the obligation to make escrow payments; and

(iii) Require the mortgagor to furnish the purchaser with a copy of the Plan, before any sales contract is signed.

(g) *Periodic analysis.* Any Plan developed in accordance with this section must provide that an analysis of the water supply shall be obtained from the local (or state) health authority no less frequently than annually, but more frequently, if determined at any time to be necessary by the health authority or by the service contractor.

(Approved by the Office of Management and Budget under control number 2502-0474)

[57 FR 9609, Mar. 19, 1992; 57 FR 27927, June 23, 1992]

**INSURED TEN-YEAR PROTECTION PLANS  
(PLAN)**

SOURCE: Sections 203.200 through 203.209 appear at 55 FR 41021, Oct. 5, 1990, unless otherwise noted.

**§ 203.200 Definitions.**

As used in §203.201 through §203.209, the following terms shall have the meaning indicated:

*Coverage contract* means a warranty certificate, insurance policy, or other document of similar purpose (including any endorsements), delivered to the homeowner at the time of closing or settlement which is issued by a State, a builder, a warranty company, or an insurance company and which defines the terms and conditions under which a Plan will provide warranty coverage of the covered property.