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LIST OF CFR SECTIONS AFFECTED

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This volume contains a compilation of the "List of Sections Affected" for all titles of the Code of Federal Regulations for the years 1949 through 1963. All sections of the CFR which have been expressly affected by documents published in the daily Federal Register are enumerated.

Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

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Title 3—The President

PROCLAMATION 4098

Termination of Additional Duty for Balance of Payments Purposes

By the President of the United States of America

A Proclamation

WHEREAS, in order to impose a surcharge required by the balance of payments position of the United States, Proclamation 4074, dated August 15, 1971, terminated in part for such period as necessary prior Presidential Proclamations insofar as such proclamations were inconsistent with, or proclaimed duties different from, those made effective pursuant to the terms of Proclamation 4074;

WHEREAS, a multilateral agreement has been reached among the Group of Ten major industrial nations which permits removal of the surcharge;

WHEREAS, under section 350(a)(6) of the Tariff Act of 1930, as amended (hereinafter referred to as "the Tariff Act"), and section 255(b) of the Trade Expansion Act of 1962 (hereinafter referred to as "the TEA"), and other authority, the President may, at any time, terminate, in whole or in part, for such period as may be necessary, any proclamation, issued pursuant to section 350 of the Tariff Act or Title II of the TEA;

WHEREAS, under section 350(a)(1)(B) of the Tariff Act and section 201(a)(2) of the TEA, the President may proclaim modifications of any existing duty as he determines to be required or appropriate to carry out trade agreements entered into under the authority of those Acts; and

WHEREAS, I hereby determine that modification of existing duties to restore the rates of duty applicable on August 15, 1971, terminated in part for such period as necessary by Proclamation 4074, is required or appropriate to carry out such trade agreements;

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under the authority vested in me by

the Constitution and the statutes, including, but not limited to, the Tariff Act, and the TEA, respectively, do proclaim as follows:

A. I hereby terminate paragraphs B and C of Proclamation 4074.

B. I hereby proclaim such modification of duties as is necessary to restore the rates of duty in effect on August 15, 1971.

C. To implement this Proclamation, the subpart inserted after subpart B of part 2 of the Appendix to the Tariff Schedules of the United States, entitled "SUBPART C—TEMPORARY MODIFICATIONS FOR BALANCE OF PAYMENTS PURPOSES" is deleted therefrom.

D. This Proclamation shall be effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after December 20, 1971.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December in the year of our Lord nineteen hundred and seventy-one, and of the Independence of the United States of America the one hundred and ninety-sixth.

Richard Nixon

[FR Doc.71-18820 Filed 12-21-71; 9:59 am]

PROCLAMATION 4099

Modifying Proclamation No. 3279, Relating to Imports of Petroleum and Petroleum Products

By the President of the United States of America

A Proclamation

The Director of the Office of Emergency Preparedness, with the advice of the Oil Policy Committee, has found that the national security will not be adversely affected by changes in the oil import control program which would increase licensed imports into Districts I–IV, including the Canadian Component of those imports, by approximately 100,000 barrels per day during 1972 over the 1971 level of imports.

The Director, with the advice of the Oil Policy Committee, has recommended that Proclamation No. 3279,[1] as amended, be further amended to adjust imports in conformity with that finding. He has, with the advice of the Oil Policy Committee, also recommended that the quantity of crude oil, unfinished oils, and finished products that may be imported into Districts I–IV continue to be determined on the basis of 12.2% of the quantity of crude oil and natural gas liquids which the Secretary of the Interior estimates will be produced in those districts, adjusted to reflect other national security determinations.

I agree with the above finding and recommendation of the Director and deem it necessary and consistent with the security objectives of Proclamation No. 3279, as amended, to adjust the imports of petroleum and petroleum products, and to improve the administration of the program, as hereinafter provided.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and laws of the United States, including section 232 of the Trade Expansion Act of 1962, do hereby proclaim that, effective as of this date, Proclamation No. 3279, as amended, is further amended as follows:

1. Paragraph (a) of Section 1A is amended as follows:

(a) In subparagraph (1) substitute "through December 31, 1972" for "during the period March 1, 1970 through December 31, 1971."

(b) Subparagraph (2) is deleted.

(c) Subparagraph (3) is renumbered as subparagraph (2) and revised to read as follows:

"During the period January 1, 1972 through December 31, 1972, Canadian imports under allocations made pursuant to this subparagraph

[1] 24 F.R. 1781; 3 CFR, 1959–1963 comp., p. 11.

(2) into Districts I–IV shall not exceed an average of 540,000 barrels per day. Entries for consumption of crude oil or unfinished oils transported by pipeline may be made until midnight January 15, 1973 under any license authorizing such imports from Canada for that period and until midnight January 15, 1972 under any license authorizing such imports from Canada for the preceding allocation period. The Secretary shall by regulation provide for allocations of such imports. The regulations shall provide that licenses issued under such allocations shall permit the entry, or withdrawal from warehouses, for consumption of Canadian imports only."

(d) Subparagraph (4) is renumbered as subparagraph (3).

2. In subparagraph (1) of paragraph (a) of Section 2 substitute "965,000" for "960,000."

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord nineteen hundred seventy-one, and of the Independence of the United States of America the one hundred ninety-sixth.

[FR Doc.71–18840 Filed 12–21–71; 12:06 pm]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Action

Section 213.3259 is amended to show that in the Office of Domestic and Anti-Poverty Operations not to exceed 10 positions of Regional Director, GS–15, are excepted under schedule B until December 31, 1973. Employment under this authority may not exceed 2 years.

Effective on publication in the FEDERAL REGISTER (12–22–71), subparagraph (2) is added to paragraph (a) of § 213.3259 as set out below.

§ 213.3259 Action.

(a) *Office of Domestic and Anti-Poverty Operations.* * * *

(2) Until December 31, 1973, not to exceed 10 positions of Regional Director, GS–15. Employment under this authority may not exceed 2 years.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71–18665 Filed 12–21–71;8:46 am]

PART 213—EXCEPTED SERVICE

Office of Economic Opportunity

Section 213.3373 is amended to show that one position of confidential secretary to the Assistant Director for Operations is excepted under schedule C.

Effective on publication in the FEDERAL REGISTER (12–22–71), subparagraph (4) is added to paragraph (c) of § 213.3373 as set out below.

§ 213.3373 Office of Economic Opportunity.

* * * * *

(c) *Office of the Assistant Director for Operations.* * * *

(4) One confidential secretary to the Assistant Director.

* * * * *

(5 U.S.C. sections 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71–18668 Filed 12–21–71;8:46 am]

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

Section 213.3399 is amended to show that one position of confidential secretary to the Chairman, Price Commission, Cost-of-Living Council, is excepted under schedule C.

Effective on publication in the FEDERAL REGISTER (12–22–71), subparagraph (3) is added to paragraph (a) of § 213.3399 as set out below.

§ 213.3399 Temporary boards and commissions.

(a) *Cost-of-Living Council and Related Organizations.* * * *

(3) One confidential secretary to the Chairman, Price Commission.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71–18667 Filed 12–21–71;8:46 am]

PART 213—EXCEPTED SERVICE

Entire Executive Civil Service

Section 213.3102(aa) of Schedule A is amended to show that the grade coverage of the authority has been extended to include positions in grade GS–11.

Effective on publication in the FEDERAL REGISTER (12–22–71), paragraph (aa) of § 213.3102 is amended as set out below.

§ 213.3102 Entire executive civil service.

* * * * *

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program and may be made initially for 1 year only. An agency may extend an appointment made under this authority for up to 1 additional year when the program committee at the laboratory concerned determines that extension will benefit both the associate and the laboratory.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71–18666 Filed 12–21–71; 8:46 am]

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 58—GRADING AND INSPECTION GENERAL SPECIFICATIONS FOR APPROVED DAIRY PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

Subpart H—U.S. Standards for Grades of Bulk American Cheese for Manufacturing

A notice of proposed rule making covering the issuance of U.S. Standards for Grades of Bulk American Cheese for Manufacturing was published in the FEDERAL REGISTER of October 27, 1971 (36 F.R. 20608). It afforded interested persons the opportunity to submit within 30 days to the Hearing Clerk written data, views, or arguments in connection with the proposal.

Statement of consideration. In 1968 the National Cheese Institute, Inc. asked the Department to develop a separate U.S. grade standard for bulk cheese for manufacturing. The standards being promulgated will recognize the quality characteristics and end use of bulk cheese for manufacturing and will be applicable to cheese packed in barrels and other bulk forms.

In response to the notice of proposed rule making, the Hearing Clerk received one comment. The comment came from the National Cheese Institute, Inc. which represents over 50 percent of the cheese manufacturers and between 80 to 90 percent of the cheese distributors. The Institute comment was favorable and recommended that the standards become effective immediately upon publication in the FEDERAL REGISTER. After consideration of the comment submitted, a few minor editorial changes were made.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) immediate assistance will be provided for the commercial trading of bulk American cheese for manufacturing on the basis of U.S. grade, (2) the Government purchase

programs will be assisted by having a specific U.S. grade standard for this product, (3) the standard has been given extensive field trials to prove its effectiveness and to provide industry familiarity with the provisions of the standard, and (4) compliance with this standard will not require any special preparation on the part of industry subject thereto which cannot be completed by such effective date.

U.S. Standards for Grades of Bulk American Cheese for Manufacturing are hereby promulgated pursuant to the authority contained in the Agricultural Marketing Act of 1946 (sec. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627). The standards are applicable only to cheese made for use in the manufacture of pasteurized process cheese products or as an ingredient in other food products.

The standards are as follows:

Subpart H—U.S. Standards for Grades of Bulk American Cheese for Manufacturing [1]

DEFINITIONS

Sec.
58.2455 Bulk American cheese for manufacturing.
58.2456 Variety and type of cheese included.
58.2457 Type of packaging.

U.S. GRADES

58.2458 Nomenclature of U.S. grades.
58.2459 Basis for determination of U.S. grades.

EXPLANATION OF TERMS

58.2460 Explanation of terms.

AUTHORITY: The provisions of this subpart H issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

DEFINITIONS

§ 58.2455 Bulk American cheese for manufacturing.

"Bulk American cheese for manufacturing" is cheese made for use in the manufacture of pasteurized process cheese products or as an ingredient in other food products. The composition requirements of the curd shall be that of the particular variety and type of cheese made. Bulk American cheese used in pasteurized process cheese or other food products shall have such defects as mold, soft spots, or salt spots removed before use.

§ 58.2456 Variety and type of cheese included.

The varieties and types of cheese included in these standards are as follows:

(a) Cheddar cheese and cheddar cheese for manufacturing shall conform to the provisions of the Definitions and Standards of Identity for Food and Food Products of the Food and Drug Administration (21 CFR 19.500 and 19.502, respectively).

(b) Washed curd cheese (soaked curd cheese), and washed curd cheese for manufacturing shall conform to the provisions of the Definitions and Standards of Identity for Food and Food Products of the Food and Drug Administration (21 CFR 19.505 and 19.507, respectively).

(c) Granular cheese (stirred curd cheese), and granular cheese for manufacturing shall conform to the provisions of the Definitions and Standards of Identity for Food and Food Products of the Food and Drug Administration (21 CFR 19.535 and 19.537, respectively).

(d) Colby cheese and colby cheese for manufacturing shall conform to the provisions of the Definitions and Standards of Identity for Food and Food Products of the Food and Drug Administration (21 CFR 19.510 and 19.512, respectively).

§ 58.2457 Types of packaging.

The following are the types of packaging for bulk American cheese for manufacturing:

(a) The cheese shall have a clean primary container in good condition, which will entirely cover the cheese and be properly closed or sealed so as to protect it from damage, contamination, or dessication.

(b) The cheese and the primary container may or may not be placed in a secondary container.

(c) If requested, the primary and/or secondary container may be inspected in accordance with the U.S. Standards for Condition of Food Containers (7 CFR 42).

U.S. GRADES

§ 58.2458 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra Grade.
(b) U.S. Standard Grade.
(c) U.S. Commercial Grade.

§ 58.2459 Basis for determination of U.S. grades.

(a) The U.S. grades of bulk American cheese for manufacturing shall be determined on the basis of rating the following quality factors:

(1) Flavor.

(2) Body and texture.

(b) The rating of each quality factor shall be established on the basis of the attributes present in each production lot in which the cheese may be formed. At least one production unit shall be selected at random from each production lot. No single piece of cheese, whatever its shape, shall weigh less than 100 pounds. If the cheese in a production unit is derived from more than one production lot, the grade shall be determined on the basis of the lowest grade for either lot. The cheese shall be graded no sooner than 10 days of age. The cheese shall be properly identified as to place of manufacture, variety and type, and marked to include date of manufacture, vat or production lot. The production unit(s) representative of the production lot of cheese shall be sampled and graded by taking a satisfactory plug with a standard bulk cheese trier from any surface of the cheese. The plug shall be taken at a slight angle to the surface of the cheese. The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

(1) *U.S. Extra Grade.* U.S. Extra Grade bulk American cheese for manufacturing conforms to the following:

(i) *Flavor.* Is pleasing and free from undesirable flavors and odors, may possess to a very slight degree, a bitter flavor; and to a slight degree, feed, and acid flavor. See table I.

(ii) *Body and texture.* A sample drawn from the cheese shall be firm and sufficiently compact to draw a satisfactory plug, however may appear loosely knit and open and may have two sweet holes, but shall be free of other gas holes. Therefore, it may possess the following: To a slight degree, sweet holes, coarse, short, mealy, weak; to a definite degree, curdy, and open. See table II.

(2) *U.S. Standard Grade.* U.S. Standard Grade bulk American cheese for manufacturing conforms to the following:

(i) *Flavor.* May possess certain undesirable flavors to a limited degree; to a very slight degree, onion; to a slight degree, bitter, yeasty, malty, old milk, weedy, barny, lipase, fruity, utensil, sulfide and whey taint; to a definite degree, feed and acid. See table I.

(ii) *Body and texture.* A plug drawn from the cheese may be loosely knit with large and connecting mechanical openings. In addition to three to four sweet holes, it may have scattered yeast holes and other scattered gas holes, however, pinny gas holes are permitted only to a very slight degree. May possess the following: To a slight degree, gassy, slitty, and corky; to a definite degree, sweet holes, coarse, short, mealy, weak, pasty, and crumbly; to a pronounced degree, curdy and open. See table II.

(3) *U.S. Commercial Grade.* U.S. Commercial Grade bulk American cheese for manufacturing conforms to the following:

(i) *Flavor.* May possess certain undesirable flavors to a limited degree; to a very slight degree, metallic and sour; to a slight degree, onion; to a definite degree, bitter, fruity, utensil, whey taint, yeasty, malty, old milk, weedy, barny, lipase, and sulfide; to a pronounced degree, feed and acid. See table I.

(ii) *Body and texture.* A plug drawn from the cheese may be loosely knit with large and connecting mechanical openings. In addition to having numerous sweet holes, yeast holes and other gas holes, it may have pinny gas holes to a slight degree. May possess the following defects: To a definite degree; gassy and slitty; to a pronounced degree, curdy, coarse, open, sweet holes, short, mealy, weak, pasty, crumbly, and corky. See table II.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

TABLE I—RATING OF FLAVOR QUALITY FACTOR

Identification of flavor attributes	U.S. Extra Grade	U.S. Standard Grade	U.S. Commercial Grade
Feed	S	D	P
Acid	S	D	P
Bitter	VS	S	D
Fruity (fermented)		S	D
Utensil		S	D
Metallic			VS
Sour			VS
Whey taint		S	D
Yeasty		S	D
Malty		S	D
Old Milk		S	D
Weedy		S	D
Onion		VS	S
Barny		S	D
Lipase		S	D
Sulfide		S	D

VS—Very Slight. S—Slight. D—Definite. P—Pronounced.

TABLE II—RATING OF BODY AND TEXTURE QUALITY FACTOR

Identification of body and texture attributes	U.S. Extra Grade	U.S. Standard Grade	U.S. Commercial Grade
Curdy	D	P	P
Coarse	S	D	P
Open	D	P	P
Sweet holes	S	D	P
Short	S	D	P
Mealy	S	D	P
Weak	S	D	P
Pasty		D	P
Crumbly		D	P
Gassy		S	D
Slitty		S	D
Corky		S	P
Pinny		VS	S

S—Slight. D—Definite. P—Pronounced. VS—Very Slight.

§ 58.2460 Explanation of terms.

(a) *General.*—(1) *Variety.* A particular cheese such as cheddar cheese, washed curd cheese, colby cheese, and granular cheese.

(2) *Type.* A distinction between one or more classes of cheese in the same variety, such as cheddar and cheddar for manufacturing.

(3) *Quality factor.* A separate criteria established for each of the following: Flavor, body, and texture.

(4) *Attribute.* An inherent characteristic of the product being graded.

(5) *Production lot (vat).* The cheese manufactured from a single source within a plant during the interval between start and finish. However the time interval varies, and each production unit must be identified as to date and order of manufacture.

(6) *Production unit (barrel or block).* A single discrete portion of a batch or continuous production output, except in instances where portions of two production lots may be contained in a single unit of either lot.

(7) *Primary container.* The immediate container in which the product is packaged and which serves to protect, preserve, and maintain the quality of the product.

(8) *Secondary container.* The container in which the product and the primary container is placed to protect and preserve them during transit or storage.

(9) *Bulk cheese trier.* A trier made of stainless steel capable of delivering a satisfactory plug approximately 10 inches long and seven-eighths inch in diameter at the top and five-eighths inch in diameter at the tip.

(b) *With respect to flavor*—(1) *Very slight.* Detected only upon very critical examination.

(2) *Slight.* Detected only upon critical examination.

(3) *Definite.* Not intense but detectable.

(4) *Pronounced.* So intense as to be easily identified.

(5) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the cheese.

(6) *Acid.* Sharp and puckery to the taste, characteristic of lactic acid.

(7) *Bitter.* Distasteful, similar to taste of quinine. Most frequently found in aged cheese.

(8) *Fruity.* A fermented fruit-like flavor resembling apples; generally increasing in intensity as the cheese ages.

(9) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sterilization of milking machines, utensils, or factory equipment.

(10) *Metallic.* A flavor having qualities suggestive of metal, imparting a puckery sensation.

(11) *Sour.* An acidy pungent flavor resembling vinegar.

(12) *Whey-taint.* A slightly acid flavor and odor characteristic of fermented whey caused by too slow expulsion of whey from the curd.

(13) *Yeasty.* A flavor indicating yeasty fermentation.

(14) *Malty.* A distinctive, harsh flavor suggestive of malt.

(15) *Old milk.* Lacks freshness.

(16) *Weedy.* A flavor due to the use of milk which possesses a common weedy flavor. Present in cheese when cows have eaten weedy hay or grazed on common weed-infested pasture.

(17) *Onion.* This flavor is recognized by the peculiar taste and aroma suggestive of its name. Present in milk or cheese when cows have eaten onions, garlic, or leeks.

(18) *Barny.* A flavor characteristic of the odor of a cow stable.

(19) *Lipase.* A flavor suggestive of rancidity or butyric acid, sometimes associated with a bitterness.

(20) *Sulfide.* A flavor of hydrogen sulfide similar to the flavor of water with a high sulfur content.

(c) *With respect to body and texture*—(1) *Slight.* An attribute which is barely identifiable and present only to a small degree.

(2) *Definite.* An attribute which is readily identifiable and present to a substantial degree.

(3) *Pronounced.* An attribute which is markedly identifiable and present to a large degree.

(4) *Smooth.* Feels silky; not dry and coarse or rough.

(5) *Firm.* Feels solid, not soft or weak.

(6) *Waxy.* When worked between the fingers, molds well like wax.

(7) *Curdy.* Smooth but firm; when worked between the fingers is rubbery and not waxy or broken down.

(8) *Coarse.* Feels rough, dry, and sandy.

(9) *Open.* Mechanical openings that are irregular in shape and are caused by workmanship and not gas fermentation.

(10) *Sweet holes.* Spherical gas holes, glossy in appearance; usually about the size of BB shots; also referred to as shot or swiss holes.

(11) *Short.* No elasticity to the plug and when rubbed between the thumb and fingers, it tends toward mealiness.

(12) *Mealy.* Short body, does not mold well and looks and feels like corn meal when rubbed between the thumb and fingers.

(13) *Weak.* Requires little pressure to crush, is soft but is not necessarily sticky like a pasty cheese.

(14) *Pasty.* Usually weak body and when the cheese is rubbed between the thumb and fingers it becomes sticky and smeary.

(15) *Crumbly.* Tends to fall apart when rubbed between the thumb and fingers.

(16) *Gassy.* Gas holes of various sizes and may be scattered.

(17) *Slitty.* Narrow elongated slits generally associated with a cheese that is gassy or yeasty. Sometimes referred to as "Fish-eyes."

(18) *Corky.* Hard, tough, over-firm cheese which does not readily break down when rubbed between the thumb and fingers.

(19) *Pinny.* Numerous very small gas holes.

Done at Washington, D.C. this 17th day of December 1971, to become effective on the date of its publication in the FEDERAL REGISTER (12-22-71).

G. R. GRANGE,
Deputy Administrator, Marketing Services.

[FR Doc.71-18693 Filed 12-21-71;8:48 am]

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Determinations and Announcements for 1972-73 Marketing Year

Sections 724.12 through 724.15 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, hereinafter referred to as the "Act," to determine the reserve supply level and the total supply of each kind of tobacco for the marketing year

beginning October 1, 1971; to announce for the 1972–73 marketing year the amounts of the national marketing quotas, national acreage allotments, national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for Fire-cured (type 21), Fire-cured (types 22–24), Dark air-cured, and Virginia sun-cured tobacco. The material previously appearing in these sections under centerhead DETERMINATIONS AND ANNOUNCEMENTS—1971–72 MARKETING YEAR remain in full force and effect as to the crop to which it was applicable.

The determinations contained in §§ 724.12 through 724.15 have been made on the basis of the latest available statistics of the Federal Government, and after due consideration of data, views, and recommendations received from Fire-cured (type 21), Fire-cured (types 22–24), Dark air-cured, and Virginia sun-cured tobacco producers and others as provided in a notice (36 F.R. 21208) given in accordance with the provisions of 5 U.S.C. 553.

It is determined that acreage-poundage quotas will not be announced for the 1972–73 marketing year for Fire-cured (type 21), Fire-cured (types 22–24), Dark air-cured (types 35 and 36), or Virginia sun-cured (type 37) tobacco.

Since tobacco farmers are now making their plans for producing tobacco in 1972 and need to know, at the earliest possible date, the applicable 1972 tobacco allotments for their farms, it is hereby found that compliance with the 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, the determinations and announcements contained herein shall become effective upon the date of filing with the Director, Office of the Federal Register.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota is the total quantity of such kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The reserve supply level is defined in the Act as 105 percent of the normal supply. The normal supply is defined in the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports. A normal year's domestic consumption is defined in the Act as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined in the Act as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

Fire-cured (type 21) tobacco. The yearly average quantity of Fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1971–72 marketing year was about 3,240,000 pounds. The average annual quantity of Fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1971–72 marketing year was 5,699,000 pounds (farm sales weight basis). Taking into account the irregular pattern of both domestic use and exports, and the market demand for the various grades, 3,845,000 pounds have been used as a normal year's domestic consumption and 5,893,000 pounds have been used as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 21,312,000 pounds.

Manufacturers and dealers reported stocks of Fire-cured (type 21) tobacco held on October 1, 1971, as 8,959,000 pounds. The 1971 Fire-cured (type 21) tobacco crop is estimated to be 6,500,000 pounds. Therefore, the total supply of Fire-cured (type 21) tobacco for the 1971–72 marketing year is 15,459,000 pounds. During the 1971–72 marketing year, it is estimated that disappearance will total about 7 million pounds. By deducting this disappearance from the total supply, a carryover of 8,459,000 pounds on October 1, 1972, the beginning of the 1972–73 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1972, results in a computed national marketing quota for the 1972–73 marketing year of 12,853,000 pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 15,424,000 pounds, is deemed to be justified in order to avoid undue restrictions to marketings.This results in a national marketing quota of 15,424,000 pounds.

In accordance with section 313(g) of the Act, the 1972 national marketing quota of 15,424,000 pounds, divided by the 1966–70, 5-year national average yield of 1,264 pounds per acre, results in a 1972 national acreage allotment of 12,202.53 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 121.95 acres, by the total of the 1972 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

Fire-cured (types 22–24) tobacco. The yearly average quantity of Fire-cured (types 22–24) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1971–72 marketing year was about 18.0 million pounds. As the manufacture of snuff, the principal domestic outlet for Fire-cured tobacco, declined, the domestic use has also declined somewhat. With this in mind, the 10-year average has been adjusted downward to 17.1 million pounds as a normal year's domestic consumption. The average annual quantity of Fire-cured (types 22–24) tobacco produced in the United States and exported during the 10 marketing years preceding the 1971–72 marketing year was 24.3 million pounds (farm sales weight basis). Exports of Fire-cured (types 22–24) tobacco during the past 5 years have averaged 24.6 million pounds as compared to an average of 23.9 million pounds for the first 5 years of the 10-year period. The demand for this kind of tobacco in foreign countries is relatively strong. In view of this trend, the 10-year average has been adjusted upward to 25.6 million pounds as a normal years exports. Application of the formula prescribed by the Act results in a reserve supply level of 93.7 million pounds.

Manufacturers and dealers reported stocks of Fire-cured (types 22–24) tobacco held on October 1, 1971, as 53.3 million pounds. The 1971 Fire-cured (types 22–24) crop is estimated to be 35.4 million pounds. Therefore, the total supply of Fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1971, is 88.7 million pounds. During the 1971–72 marketing year it is estimated that disappearance will total about 40.0 million pounds. By deducting this disappearance from the total supply, a carryover of 48.7 million pounds on October 1, 1972, beginning of the 1972–73 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1972, results in a computed national marketing quota for the 1972–73 marketing year of 45.0 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the national marketing quota of 45.0 million pounds by 20 percent to 54.0 million pounds is deemed to be justified in order to avoid undue restrictions of marketings. This results in a national marketing quota of 54.0 million pounds.

In accordance with section 313(g) of the Act, the 1972 national marketing quota of 54.0 million pounds, divided by the 1966–70 5-year national average yield of 1,798 pounds per acre, results in a 1972 national acreage allotment of 30,033.37 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.10 is determined by dividing the national

acreage allotment, less a national reserve of 256.26 acres, by the total of the 1972 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

Dark air-cured tobacco. The yearly average quantity of Dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1971–72 marketing year was about 17.1 million pounds, while the average annual quantity produced domestically and exported during this period was 3.4 million pounds (farm sales weight basis). Total disappearance of Dark air-cured tobacco has been trending downward for many years, although the average disappearance for the last 5 years of the 10-year period is only 1.2 million pounds less than the 10-year average. Even with the decline, production has been less than disappearance in 7 years of the 10-year base period and in each of the last 6 years. Farmers, on an average, have harvested only 78 percent of their allotted acreage during the last 5 years of the 10-year period, and only 76 percent in 1971. In view of these facts, 19.8 million pounds have been used as a normal year's domestic consumption and 3.5 million pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 63.2 million pounds.

Manufacturers and dealers reported stocks of Dark air-cured tobacco held on October 1, 1971, as 49.8 million pounds. The 1971 Dark air-cured crop is estimated to be 16.2 million pounds. Therefore, the total supply of Dark air-cured tobacco for the marketing year beginning October 1, 1971, is 66.0 million pounds. During the 1971–72 marketing year, it is estimated that disappearance will total about 20.0 million pounds. By deducting this disappearance from the total supply, a carryover of 46.0 million pounds on October 1, 1972, beginning of the 1972–73 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1972, results in a computed national marketing quota for the 1972–73 marketing year of 17.2 million pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the national marketing quota of 17.2 million pounds by 20 percent to 20.6 million pounds is deemed to be justified in order to avoid undue restrictions to marketings. This results in a national marketing quota of 20.6 million pounds.

In accordance with section 313(g) of the Act, the 1972 national marketing quota of 20.6 million pounds, divided by the 1966–70 5-year national average yield of 1,821 pounds per acre, results in a 1972 national acreage allotment of 11,312.46 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 89.78 acres, by the total of the 1972 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

Virginia sun-cured tobacco. The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1971–72 marketing year was about 1,475,000 pounds, and the average annual quantity produced in the United States and exported during the same period was 300,000 pounds (farm sales weight basis). While there has been no pronounced change in exports or domestic use during the base period, total disappearance has exceeded production during each of the past 6 years, and 8 years of the 10-year period. With this in mind, 1,460,000 pounds have been used as a normal year's domestic use and 299,000 pounds as a normal year's exports. Application of the formula prescribed by the Act results in a reserve supply level of 4,733,000 pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1971, as 3,146,000 pounds. The 1971 Virginia sun-cured tobacco crop is estimated to be 1,035,000 pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1971–72 marketing year is 4,181,000 pounds. During the 1971–72 marketing year, it is estimated that disappearance will total about 1,400,000 pounds. By deducting this disappearance from the total supply, a carryover of 2,781,000 pounds for the 1972–73 marketing year, is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1972, results in a computed national marketing quota for the 1972–73 marketing year of 1,952,000 pounds. Use of the authority of the Secretary in section 312(b) of the Act to increase the computed quota by 20 percent to 2,342,000 pounds is deemed to be justified in order to avoid undue restrictions of marketing. This results in a national marketing quota of 2,342,000 pounds.

In accordance with section 313(g) of the Act, the 1972 national marketing quota of 2,342,000 pounds, divided by the 1966–70 5-year national average yield of 1,115 pounds per acre, results in a 1972 national acreage allotment of 2,100.44 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 21.0 acres, by the total of the 1972 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less reserve, to old farms.

DETERMINATIONS AND ANNOUNCEMENTS—1972–73 MARKETING YEAR

Sec.
724.12 Fire-cured (type 21) tobacco.
724.13 Fire-cured (types 22-24) tobacco.
724.14 Dark air-cured tobacco.
724.15 Virginia sun-cured tobacco.

AUTHORITY: The provisions of this subpart are issued under secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375.

DETERMINATIONS AND ANNOUNCEMENTS—1972–73 MARKETING YEAR

§ 724.12 Fire-cured (type 21) tobacco.[1]

(a) *Reserve supply level.*[1] The reserve supply level for Fire-cured (type 21) tobacco is 21,312,000 pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 3,845,000 pounds and a normal year's exports of 5,893,000 pounds.

(b) *Total supply.*[1] The total supply of Fire-cured (type 21) tobacco for the marketing year beginning October 1, 1971, is 15,459,000 pounds, calculated in accordance with the Act, from a carryover of 8,959,000 pounds and estimated 1971 production of 6,500,000 pounds.

(c) *Carryover.*[1] The estimated carryover of Fire-cured (type 21) tobacco for the marketing year beginning October 1, 1972, is 8,459,000 pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1971, of 7 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1972, a supply of Fire-cured (type 21) tobacco equal to the reserve supply level of such tobacco is 12,853,000 pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 12,853,000 pounds would result in undue restriction of marketings during the 1972–73 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1972, is 15,424,000 pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1972–73 marketing year by the 5-year 1966–70 national average yield of 1,264 pounds is 12,202.53 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less the national reserve, by the total of

[1] Rounded to the nearest thousand pounds.

the 1972 preliminary allotments for 1972 old farms.

(g) *National reserve.* The national acreage reserve is 121.95 acres, of which 10.00 acres are made available for 1972 old farms, and 111.95 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.13 Fire-cured (types 22–24) tobacco.

(a) *Reserve supply level.*[2] The reserve supply level for Fire-cured (types 22–24) tobacco is 93.7 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 17.1 million pounds and a normal year's exports of 25.6 million pounds.

(b) *Total supply.*[2] The total supply of Fire-cured (types 22–24) tobacco for the marketing year beginning October 1, 1971, is 88.7 million pounds, calculated in accordance with the Act, from a carryover of 53.3 million pounds and estimated 1971 production of 35.4 million pounds.

(c) *Carryover.*[2] The estimated carryover of Fire-cured tobacco (types 22–24) for the marketing year beginning October 1, 1972, is 48.7 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1971, of 40.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[2] The amount of Fire-cured (types 22–24) tobacco which will make available during the marketing year beginning October 1, 1972, a supply of Fire-cured (types 22–24) tobacco equal to the reserve supply level of such tobacco is 45.0 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 45.0 million pounds would result in undue restriction of marketings during the 1972–73 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Fire-cured (types 22–24) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1972, is 54.0 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1972–73 marketing year by the 5-year 1966–70 national average yield of 1,798 pounds is 30,033.37 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1972–73 marketing year is 1.10. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1972 preliminary allotments for 1972 old farms.

(g) *National reserve.* The national acreage reserve is 256.26 acres, of which 5.00 acres are made available for 1972 new farms, and 251.26 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.14 Dark air-cured tobacco.

(a) *Reserve supply level.*[2] The reserve supply level for Dark air-cured tobacco is 63.2 million pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 19.8 million pounds and a normal year's exports of 3.5 million pounds.

(b) *Total supply.*[2] The total supply of Dark air-cured tobacco for the marketing year beginning October 1, 1971, is 66.0 million pounds calculated in accordance with the Act, from a carryover of 49.8 million pounds and estimated 1971 production of 16.2 million pounds.

(c) *Carryover.*[2] The estimated carryover of Dark air-cured tobacco for the marketing year beginning October 1, 1972, is 46.0 million pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1971, of 20.0 million pounds from the total supply of such tobacco.

(d) *National marketing quota.*[2] The amount of Dark air-cured tobacco which will make available during the marketing year beginning October 1, 1972, a supply of Dark air-cured tobacco equal to the reserve supply level of such tobacco is 17.2 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 17.2 million pounds would result in undue restriction of marketings during the 1972–73 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Dark air-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1972, is 20.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1972–73 marketing year by the 5-year, 1966–70, national average yield of 1,821 pounds, is 11,312.46 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1972–73 marketing year is 1.00. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1972 preliminary allotments for 1972 old farms.

(g) *National reserve.* The national acreage reserve is 89.78 acres, of which 10.00 acres are made available for 1972 new farms, and 79.78 acres are made available for making corrections and adjusting inequities in old farm allotments.

§ 724.15 Virginia sun-cured tobacco.

(a) *Reserve supply level.*[1] The reserve supply level for Virginia sun-cured tobacco is 4,733,000 pounds, calculated, as provided in the Act, from a normal year's domestic consumption of 1,460,000 pounds and a normal year's exports of 299,000 pounds.

(b) *Total supply.*[1] The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1971, calculated in accordance with the Act, is 4,181,000 pounds, consisting of carryover of 3,146,000 pounds and estimated 1971 production of 1,035,000 pounds.

(c) *Carryover.*[1] The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1972, is 2,781,000 pounds, calculated in accordance with the Act by subtracting the estimated disappearance for the marketing year beginning October 1, 1971, of 1,400,000 pounds from the total supply of such tobacco.

(d) *National marketing quota.*[1] The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1972, a supply of sun-cured tobacco equal to the reserve supply level of such tobacco is 1,952,000 pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 1,952,000 pounds would result in undue restriction of marketings during the 1972–73 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1972, is 2,342,000 pounds.

(e) *National acreage allotment.* The national acreage allotment, calculated in accordance with the Act by dividing the national marketing quota for the 1972–73 marketing year by the 5-year, 1966–70, national average yield of 1,115 pounds, is 2,100.44 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1972–73 marketing year is 1.0. It was calculated in accordance with the Act by dividing the national acreage allotment, less reserve, by the total of the 1972 preliminary allotments for 1972 old farms.

(g) *National reserve.* The national acreage reserve is 21.00 acres, of which 5.00 acres are made available for 1972 new farms, and 16.00 acres are made available for making corrections and adjusting inequities in old farm allotments.

Effective date: Date of filing of this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on December 15, 1971.

EARL L. BUTZ,
Secretary.

[FR Doc.71-18662 Filed 12-21-71;8:49 am]

[2] Rounded to the nearest tenth of a million.

[1] Rounded to the nearest thousand pounds.

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 1]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

1972 Requirements and Quotas for Foreign Countries

Basis and purpose and statement of bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended by Public Law 92-138, approved October 14, 1971, hereinafter referred to as the "Act". The purpose of this amendment is to permit the importation of an additional 150,000 short tons, raw value, of raw sugar from foreign countries during the first quarter of 1972.

The additional quantity is needed to enable raw sugar refiners to build up their inventories as a safeguard against possible work stoppages on the waterfront at the termination of the Taft-Hartley injunction period.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended as follows:

Paragraph (d) of § 811.13 is amended by amending subparagraph (1), subdivision (ii) of subparagraph (2), and subdivision (i) of subparagraph (3) and by adding a new subdivision (v) to subparagraph (3) to read as follows:

§ 811.13 Quotas for foreign countries.

* * * * *

(d) (1) Of the total quotas and prorations for foreign countries established in paragraphs (b) and (c) of this section, an amount not to exceed 1,150,000 short tons, raw value of raw sugar, plus the quantity imported in late 1971 under bond for refining and storage, may be charged against such 1972 quotas and authorized for importation or release from bond from all such foreign countries in accordance with Part 817 of this chapter during the first quarter of 1972. The quantity imported in late 1971 under bond for refining and storage will be released from bond and charged to quotas on January 1, 1972. The quantity, 1,150,000 short tons, raw value, will be authorized for importation and charged to quotas during the first quarter of 1972 as set forth in subparagraphs (2) and (3) of this paragraph (d).

* * * * *

(2) * * *

(ii) Applications for the importation of sugar during the first quarter received on or before November 19, 1971, will be considered as having been received at the same time. Applications for the importation during the first quarter of 150,000 short tons, raw value, of sugar, representing an addition to the initial limitation of 1 million short tons, raw value, received on or before December 28, 1971, will be considered as having been received at the same time.

(3) (i) Allocations of first quarter importations among countries will be made in the following manner but not to exceed as to each country the quantity applied for. Allocations among countries of the initial limitation of 1 million short tons, raw value, shall be made as provided in subdivisions (ii), (iii), and (iv) of this subparagraph. Allocation among countries of 150,000 short tons, raw value, representing an addition to the initial limitation of 1 million short tons, raw value, shall be made as provided in subdivision (v) of this subparagraph.

* * * * *

(v) The 150,000 short tons, raw value, shall be prorated among countries that supply the sugar for which applications for importation have been made, on the basis of first quarter importations from such countries as set forth in subparagraph (4) of this paragraph.

* * * * *

(Secs. 202 and 403; 61 Stat. 924 as amended, 932 as amended; 7 U.S.C. 1112 and 1158 and Public Law 92-138 approved October 14, 1971)

Effective date. In order to promote orderly marketing, it is essential that this amendment be effective as soon as possible so that all persons selling and purchasing sugar for consumption in the continental United States can promptly plan and market under the changed marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 533 is unnecessary, impracticable, and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on December 17, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-18688 Filed 12-17-71;3:57 pm]

[Sugar Reg. 811, Amdt. 8]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements, Quotas, and Quota Deficits for 1971

Basis and purposes and bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act." The purpose of this amendment to Sugar Regulation 811, as amended, is to determine and revise deficits in quotas established pursuant to the Act.

Section 204(a) of the Act provides that the Secretary shall from time to time determine whether any area or country will be unable to fill its quota or the proration of a deficit. On the basis of information which recently became available to the Department, it is herein determined that Haiti will be able to supply only 23,066 short tons, raw value, of its 1971 quota. Therefore, it is hereby found that Haiti will be unable to fill its currently effective quota by 4,434 short tons, raw value. Accordingly, an additional deficit is herein determined in the quota for Haiti of 4,434 short tons, raw value. On the basis of information available to the Department, the Republic of the Philippines will not be able to market 31,839 short tons, raw value, of the additional deficit prorated to it in amendment 7 of this Regulation 811. Accordingly, a deficit of 31,839 short tons, raw value, is herein determined in the quota for the Republic of the Philippines.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended by amending §§ 811.92 and 811.93 as follows:

1. Section 811.92 is amended by amending paragraph (a) to read as follows:

§ 811.92 Proration and allocation of deficits and quotas in effect.

(a) Of the total deficits determined in subparagraph (a) (2) of § 811.91, totaling 1,052,667 short tons, raw value, a quantity of 1,005,000 tons representing deficits in the quotas of Puerto Rico and the Virgin Islands was previously determined, allocated and prorated in amendments 3, 4, and 7 of this Part 811 (36 F.R. 8773, 14624, 23791). Deficits in the quota for Haiti totaling 5,257 short tons, raw value, were previously determined, allocated and prorated in amendments 5, 6, and 7 of this Part 811 (36 F.R. 15519, 17023, 23791). An additional deficit is herein determined in the quota for Haiti of 4,434 tons. A deficit of 31,839 tons is also determined herein in the quota for the Republic of the Philippines. The total deficits herein determined of 36,273 tons are hereby prorated pursuant to section 204(a) of the Act, to Western Hemisphere countries, other than Haiti, with quotas in effect as established in Sugar Regulation 811, for 1971 (36 F.R. 23791).

* * * * *

2. Section 811.93 is amended by amending paragraphs (b) and (c) to read as follows:

§ 811.93 Quotas for foreign countries.

* * * * *

(b) For the calendar year 1971, the quota for the Republic of the Philippines is 1,593,733 short tons, raw value, representing 1,126,020 short tons, established pursuant to section 202 of the Act and 467,713 short tons established pursuant to section 204 of the Act. Of the quantity of 1,126,020 short tons established pursuant to section 202 of the Act, only 59,920 short tons, raw value, may be filled by direct-consumption sugar pursuant to section 207(d) of the Act.

(c) For the calendar year 1971, the prorations to individual foreign countries other than the Republic of the

Philippines pursuant to section 202 of the Act are shown in columns (1) and (2) of the following table. Deficit prorations established in prior amendments to § 811.93 are shown in column (3). In column (4) the deficits in quotas declared herein amounting to 36,273 short tons, raw value, are herein prorated to Western Hemisphere countries, excluding Haiti, listed in section 202(c)(3)(A) of the Act, on the basis of published quotas most recently in effect.

Country	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d) [1]	Previous deficit prorations	New deficit prorations	Total quotas and prorations
	(1)	(2)	(3)	(4)	(5)
Mexico	246,095	267,041	93,156	6,980	618,272
Dominican Republic	240,683	261,168	146,704	7,405	655,960
Brazil	240,683	261,168	95,998	6,826	604,675
Peru	191,973	208,313	76,671	5,445	482,302
British West Indies	96,146	76,413	33,730	2,356	208,645
Ecuador	35,020	38,001	13,968	993	87,982
French West Indies	30,244	24,038	10,610	741	65,633
Argentina	29,608	32,126	11,810	840	74,384
Costa Rica	28,334	30,746	11,301	804	71,185
Nicaragua	28,334	30,746	11,301	804	71,185
Colombia	25,469	27,637	10,160	722	63,988
Guatemala	23,877	25,909	9,523	677	59,986
Panama	17,828	19,347	7,111	506	44,792
El Salvador	17,510	18,999	6,983	497	43,989
Haiti	13,371	14,510	−381	−4,434	23,066
Venezuela	12,093	13,127	4,826	343	30,394
British Honduras	7,004	5,566	2,458	172	15,200
Bolivia	2,865	3,110	1,143	81	7,199
Honduras	2,865	3,110	1,143	81	7,199
Australia	114,611	90,434			205,045
Republic of China	47,754	37,681			85,435
India	45,844	36,174			82,018
South Africa	33,746	26,628			60,374
Fiji Islands	25,151	19,845			44,996
Thailand	10,506	8,290			18,796
Mauritius	10,506	8,290			18,796
Malagasy Republic	5,412	4,270			9,682
Swaziland	4,139	3,266			7,405
Ireland	5,351	0			5,351
Bahamas	10,000	0			10,000
Total	1,603,027	1,695,953	553,115	31,839	3,783,934

[1] Proration of the quotas withheld from Cuba and Southern Rhodesia.

(Secs. 201, 202, 204, and 403; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 932; and 7 U.S.C. 1111, 1112, 1114, and 1153)

Effective date. This action prorates additional deficits in quotas of 36,273 tons to Western Hemisphere countries. In order to promote orderly marketing, it is essential that this amendment be effective immediately so that all persons selling and purchasing sugar for consumption in the continental United States can promptly plan and market under the changed marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 533 is unnecessary, impracticable, and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on December 17, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-18689 Filed 12-17-71;3:53 pm]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 914—ORANGES GROWN IN INTERIOR DISTRICT IN FLORIDA

Method of Allocating Fixed Quantity

Notice was published in the FEDERAL REGISTER issue on November 25, 1971 (36 F.R. 22589), that the Department was giving consideration to a proposed amendment of § 914.130 of the rules and regulations (Subpart—Rules and Regulations; 7 CFR Part 914.130; 36 F.R. 3801) currently effective pursuant to the applicable provisions of the marketing agreement and Order No. 914 (7 CFR Part 914), regulating the handling of oranges grown in the Interior District in Florida, hereinafter referred to collectively as the "order." This is a regulatory program effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The aforesaid amendment was proposed by the Interior Orange Marketing Committee established pursuant to the marketing agreement and order as the agency to administer the provisions thereof. No written data, views, or arguments were filed with respect to said proposal during the period specified therefor in the notice.

Section 914.45 of the order outlines requirements that the quantity of oranges fixed by the Secretary which may be handled during any week shall be allocated between early and midseason type oranges and late type oranges on the basis of the average percentage of the total shipments of each type of oranges during the preceding three fiscal periods subject to stated adjustments. The amendment updates the division of allotment between the two types of oranges so as to be applicable during any week of the 1971–72 fiscal period, when shipments of both types are being made, by specifying the percentage figures to be used in reflecting the respective actual average percentages of total shipments represented by each of the types during the last three fiscal periods (1968–69 through 1970–71).

After consideration of all relevant matter presented, including that in the notice, it is hereby found that amendment, as hereinafter set forth, of said rules and regulations is in accordance with the order and will tend to effectuate the declared policy of the act.

Therefore, the table following the introductory language of paragraph (b) of § 914.130 is amended to read as follows:

§ 914.130 Method of allocating fixed quantity.

* * * * *

(b) * * *

TABLE

(For 1971-72 Fiscal Period)

Early and midseason type oranges in shipments for a given week	2 weeks later	3 weeks later
Percent	*Percent*	*Percent*
99	78	59
98	74	44
97	70	40
96	65	34
95	59	30
94	55	27
93	50	24
92	48	23
91	45	21
90	42	19
89	39	18
88	37	17
87	33	15
86	31	14
85	30	13
84	29	12
83	28	12
82	27	11
81	26	11
80	25	11
79	24	10
78	24	10
77	23	10
76	23	9
75	22	9
74	21	8

TABLE—Continued

(FOR 1971-72 Fiscal Period)

Early and midseason type oranges in shipments for a given week	2 weeks later	3 weeks later
Percent	*Percent*	*Percent*
73	21	8
72	20	7
71	20	7
70	19	7
69	18	7
68	17	6
67	17	6
66	16	6
65	15	5
64	15	5
63	14	5
62	14	5
61	14	5
60	13	4
59	13	4
58	13	4
57	13	4
56	12	4
55	11	4
54	11	4
53	11	4
52	10	4
51	10	4
50	10	4
49	10	4
48	9	3
47	9	3
46	9	3
45	8	3
44	8	3
43	8	3
42	7	3
41	7	3
40	7	3
39	7	3
38	6	3
37	6	3
36	6	3
35	6	3
34	5	2
33	5	2
32	5	2
31	5	2
30	4	2
29	4	2
28	4	2
27	4	2
26	4	2
25	4	2
24	4	2
23	4	2
22	3	2
21	3	2
20	3	2
19	3	2
18	3	2
17	3	1
16	2	1
15	2	1
14	2	1
13	2	1
12	2	1
11	2	1
10	2	1
9	2	1
8	2	1
7	2	1
6	1	1
5	1	1
4	1	1
3	1	1
2	1	0
1	0	0

It is hereby found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of early and midseason type oranges are currently in progress, and it is estimated that shipments of late type oranges will begin very shortly; (2) the table of percentages, herein set forth, is pursuant to § 914.45 of this part which requires that the total quantity of oranges fixed by the Secretary which may be handled during any week of a fiscal period shall be allocated between the two types of oranges; (3) such allocation is required to reflect the respective average proportions of both types of oranges that were shipped during a specified week in the previous three fiscal periods subject to specified adjustments; (4) notice of proposed rule-making relative to such amendment was published in the FEDERAL REGISTER (36 F.R. 22589), and no written data, views, or arguments were filed with respect to such percentages or their applicability to the 1971–72 fiscal period; (5) the percentages specified herein are applicable in all weeks of the current fiscal period (which began on August 1, 1971) when shipments of both types of oranges are being made.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 16, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18630 Filed 12-21-71;8:45 am]

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Expenses and Rate of Assessment and Carryover of Unexpended Funds

On December 3, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 23072) regarding proposed expenses and the related rate of assessment for the fiscal period September 1, 1971, through August 31, 1972, and carryover of unexpended funds from the period September 1, 1970, through August 31, 1971, pursuant to the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This regulatory program is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The notice afforded 10 days for interested persons to submit written data, views, or arguments in connection with said proposals. None were received.

After consideration of all relevant matter presented, including the proposals which were submitted by the Cranberry Marketing Committee (established pursuant to the amended marketing agreement and order) and set forth in the aforesaid notice, it is hereby found and determined that:

§ 929.212 Expenses and rate of assessment.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Cranberry Marketing Committee during the fiscal period September 1, 1971, through August 31, 1972, will amount to $54,050.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 929.41, is fixed at $0.03 per barrel of cranberries, or equivalent quantity of cranberries.

(c) *Reserve.* Unexpended assessment funds, in excess of expenses incurred during the fiscal period ended August 31, 1971, are carried over as a reserve in accordance with § 929.42 of said amended marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of cranberries are now being made, (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable cranberries handled during the aforesaid period, and (3) such period began on September 1, 1971, and said rate of assessment will automatically apply to all such cranberries beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 16, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-18650 Filed 12-21-71;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

PART 4—MISCELLANEOUS RULES

Public Disclosure of Records

The Commission announces the following amendments to Parts 1 and 4 of Chapter I of Title 16 of the Code of Federal Regulations. These amendments are effective on the date of their publication in the FEDERAL REGISTER (12–22–71).

Section 1.4(a) is revised to read as follows:

§ 1.4 Public disclosure.

(a) Advisory opinions, and requests therefor, including names and details, will be placed in the Commission's public record immediately after the requesting party has received the Commission's advice, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest.

* * * * *

Section 4.9(c)(13) is amended to read as follows:

§ 4.9 Public records.

* * * * *

(c) * * *

(13) Requests for advisory opinions under §§ 1.1 and 3.61(d) or for advice concerning proposed mergers and applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders. Also included are the supporting materials and communications with respect to such requests received by any member of the Commission and any employee involved in the decisional process, to the extent that such requests, applications, and materials are made public under §§ 1.4 (a) and (b) and 3.61 (d) and (f) of this chapter; objections or comments with respect to proposed divestitures, acquisitions, or similar transactions which are filed for the public record; and any advice or response given and made public under §§ 1.4 (a) or (b) and 3.61 (d) or (f) of this chapter, together with a statement of supporting reasons.

* * * * *

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46)

By direction of the Commission dated December 14, 1971.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-18663 Filed 12-21-71;8:46 am]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Reg. No. 10, further amended]

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969—)

Miscellaneous Amendments

Correction

In F.R. Doc. 71-18193 appearing at page 23752 in the issue for Tuesday, December 14, 1971, in § 410.215(c), first line, the word "compiled" should read "complied".

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

TYLOSIN

The Commissioner of Food and Drugs has evaluated supplemental new animal drug applications (13-162V and 15-166V) filed by Elanco Products Co., a Division of Eli Lilly and Co., Indianapolis, Ind. 46206, proposing the safe and effective use of tylosin in the feed of replacement chickens to aid in the control of chronic respiratory disease caused by *Mycoplasma gallisepticum*. The supplemental applications are approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended in § 121.217(d) by adding a new item 9 to table 3, as follows:

§ 121.217 Tylosin.

* * * * *

(d) * * *

TABLE 3.—TYLOSIN IN ANIMAL FEED

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
9. Tylosin	1,000			For replacement chickens; as tylosin phosphate; withdraw 5 days before slaughter; administer in feed to chickens 0 to 5 days of age, follow with second administration in feed for 24 to 48 hours at 3 to 5 weeks of age.	To aid in the control of chronic respiratory disease caused by *Mycoplasma gallisepticum*.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (12-22-71).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: December 10, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71-18649 Filed 12-21-71;8:51 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Diphenylhydantoin Sodium Capsules

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (6-032V) filed by Parke, Davis & Co., Joseph Campau Avenue at the River, Detroit, Mich. 48232 proposing the safe and effective use of diphenylhydantoin sodium capsules for the treatment of dogs. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding a new section as follows:

§ 135c.62 Diphenylhydantoin sodium capsules.

(a) *Specifications.* Diphenylhydantoin sodium capsules conform to U.S.P. XVIII requirements.

(b) *Sponsor.* See code No. 049 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is indicated for use in the control of epileptiform convulsions in dogs.

(2) An initial dose of from 4 to 8 milligrams per pound of body weight in divided doses is suggested with the dose then gradually increased or decreased to the daily minimum amount necessary to maintain control.

(3) Since control with the drug requires several days, the transition from other anticonvulsants to this drug should be gradual. Sudden withdrawal of other anticonvulsants, including phenobarbital, should be avoided in order to exercise proper control of the convulsions.

(4) For use only by or on the order of a licensed veterinarian.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (12-22-71).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: November 14, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71-18647 Filed 12-21-71;8:50 am]

SUBCHAPTER C—DRUGS

STERILE BENZATHINE PENICILLIN G AND PROCAINE PENICILLIN G SUSPENSION FOR VETERINARY USE

Antibiotic Drug and New Animal Drug Application Evaluation

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (65-087V) filed by Fort Dodge Laboratories, Fort Dodge, Iowa 50501, proposing the safe and effective use of sterile benzathine penicillin G and

procaine penicillin G suspension for injection for the treatment of horses, beef cattle, and dogs. The supplemental application is approved.

Since the drug is subject to batch certification under provisions of section 512 (n) of the Federal Food, Drug, and Cosmetic Act, this order establishes both antibiotic drug and new animal drug regulations. In addition, this drug and all injectable benzathine penicillin drugs are placed on a prescription basis for veterinary use. The order also amends the regulations to provide for negligible residues of penicillin in the edible tissues of treated beef cattle.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), (n), 82 Stat. 347, 350; 21 U.S.C. 360b(i)(n)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 135b, 135g, and 146a are amended as follows:

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

1. In part 135b by adding the following new section:

§ 135b.43 Sterile benzathine penicillin G and procaine penicillin G suspension, veterinary.

(a) *Specifications.* Meets the specifications in § 146a.86 of this chapter. Each cubic centimeter contains 150,000 units of benzathine penicillin G and 150,000 units of procaine penicillin G in aqueous suspension.

(b) *Sponsor.* See code No. 017 in § 135.510(c) of this chapter.

(c) *Related tolerances.* See § 135g.12 of this chapter.

(d) *Conditions of use.* (1) It is used for the treatment of bacterial infections susceptible to penicillin G in horses, dogs, and beef cattle.

(2) Inject intramuscularly in horses at 2 cubic centimeters per 150 pounds of body weight. Inject intramuscularly or subcutaneously in dogs at 1 cubic centimeter per 10 to 25 pounds of body weight. Inject beef cattle subcutaneously only at 2 cubic centimeters per 150 pounds body weight. The dosage should be repeated in 48 hours.

(3) Treatment in beef cattle should be limited to two doses. Not to be used in beef cattle within 30 days of slaughter nor in horses intended for food purposes.

(4) Restricted to use by or on the order of a licensed veterinarian.

PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 135g is amended by revising 135g.12 to read as follows:

§ 135g.12 Penicillin.

Tolerances are established for residues of penicillin and the salts of penicillin in food as follows:

(a) 0.05 part per million (negligible residue) in the uncooked edible tissues of cattle.

(b) Zero in the uncooked edible tissues of chickens, turkeys, pheasants, quail, and swine; in eggs; and in milk or in any processed food in which such milk has been used.

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

3. Part 146a is amended;

a. By revising § 146a.77(c)(2) to read as follows:

§ 146a.77 Benzathine penicillin G for aqueous injection.

(c) * * *

(2) *It is packaged for dispensing and intended solely for veterinary use.* Its label and labeling shall comply with all requirements prescribed by subparagraph (1) of this paragraph, except that in lieu of the requirements of § 1.106(b) of this chapter, it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter, issued under section 502(f) of the act.

* * * * *

b. In § 146a.85 by redesignating paragraph (c) as paragraph (d), and inserting a new paragraph (c) as follows:

§ 146a.85 Benzathine-procaine-buffered crystalline penicillins for aqueous injection.

* * * * * *

(c) If it is packaged for dispensing and intended solely for veterinary use, it shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1), of this chapter, it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter, issued under section 502(f) of the act.

* * * * *

c. In § 146a.90 by revising paragraph (b) as follows:

§ 146a.90 Procaine penicillin and benzathine penicillin G in streptomycin sulfate solution, veterinary; procaine penicillin and benzathine penicillin G in dihydrostreptomycin sulfate solution, veterinary (procaine penicillin and benzathine penicillin G in crystalline dihydrostreptomycin sulfate solution, veterinary).

* * * * *

(b) It shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1) of this chapter, it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter, issued under section 502(f) of the act.

* * * * *

d. In § 146a.100 by adding a new paragraph (c):

§ 146a.100 Benzathine penicillin G in oil.

* * * * *

(c) If it is packaged for dispensing and intended solely for veterinary use, it shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1) of this chapter, it shall be labeled in accordance with the requirements prescribed by § 1.106(c) of this chapter, issued under section 502(f) of the act.

e. In § 146a.101(a) by inserting the following in reserved subparagraph (3):

§ 146a.101 Benzathine penicillin G and procaine penicillin G in oil.

(a) * * *

(3) If it is packaged for dispensing and intended solely for veterinary use, it shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1) of this chapter, it shall be labeled in accordance with the requirements of § 1.106(c) of this chapter, issued under section 502(f) of the act.

* * * * *

f. By revising § 146a.110 to read as follows:

§ 146a.110 Benzathine penicillin G in streptomycin sulfate solution, veterinary; benzathine penicillin G in dihydrostreptomycin sulfate solution, veterinary (benzathine penicillin G in crystalline dihydrostreptomycin sulfate solution, veterinary).

Benzathine penicillin G in streptomycin sulfate solution, veterinary, and benzathine penicillin G in dihydrostreptomycin sulfate solution, veterinary, conform to all requirements and are subject to all procedures prescribed by § 146a.67 for procaine penicillin in streptomycin sulfate solution, veterinary, and procaine penicillin in dihydrostreptomycin sulfate solution, veterinary, except that:

(a) Benzathine penicillin G is used in lieu of procaine penicillin. The benzathine penicillin G used conforms to the requirements of § 146a.68(a).

(b) It shall be labeled in accordance with the requirements of § 148.3 of this chapter, except that in lieu of the requirements of § 148.3(a)(1) of this chapter, it shall be labeled in accordance with the requirements of § 1.106(c) of this chapter, issued under section 502(f) of the act.

(c) Its label and labeling shall bear the statement "Warning—not for use in animals raised for food production."

Data supplied by the manufacturer concerning the subject antibiotic drugs have been evaluated. Since the conditions prerequisite to providing for certification have been complied with and since it is in the public interest not to delay in so providing, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall become effective upon publication in the FEDERAL REGISTER (12-22-71).

(Sec. 512(i), (n), 82 Stat. 347, 350; 21 U.S.C. 360b(i)(n))

Dated: December 10, 1971.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.71-18643 Filed 12-21-71;8:50 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Subpart D—Exemptions From Tolerances

CERTAIN INERT INGREDIENTS IN PESTICIDE FORMULATIONS

In response to the notice published in the FEDERAL REGISTER of December 8, 1970 (35 F.R. 18622), proposing that § 180.1001 (c) and (d) be amended to exempt certain additional inert ingredients from the requirement of a tolerance when used in pesticide formulations, 12 manufacturers submitted comments. No requests were received for referral of the proposal to an advisory committee pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act. The comments questioned the absence of certain items from the list and the need for limiting the use of some inert ingredients to the time before the crop emerges from the soil.

Having considered the comments received and other relevant information, it is concluded that the proposal should be adopted as set forth below. Some of the proposed items have been changed; the misspelling of one, epichlorohydrin, has been corrected; three new items, wheat starch, calcium citrate, and 1,1,1-trichloroethane, have been added to the list of items in the table in § 180.1001(c); and two items, magnesium sulfate and monochlorobenzene, have been deleted from the order because they have already been exempted from the requirement of a tolerance by another order.

The precise status of any ingredient as being in the active or inert category can only be established in relation to individual formulations, the primary toxicant involved, and the particular uses which are specified. It is possible that some of the inert ingredients being added to the two tables in § 180.1001 could be considered active ingredients. Accordingly, the introductory sentences of paragraphs (c) and (d) are revised by including the parenthetical statement "(or occasionally active)" after the word "inert."

Section 121.102 *Adjuvants for pesticide chemicals* of the food additive regulations (21 CFR 121.102) exempts substances listed in § 180.1001(c) and (d) from the requirement of a food additive tolerance under section 409 of the act for use as adjuvants added to pesticides by growers or applicators prior to application to the raw agricultural commodity. Accordingly, the substances shown below are exempted from such a food additive tolerance.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424). Subsequently, Part 420, Chapter III, Title 21 was redesignated Part 180 and transferred to Subchapter E, Chapter I, Title 40 (36 F.R. 22369).

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a(c), (e)), the authority transferred to the Administrator (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038):

1. Section 180.1001 is amended by revising the introductory sentences of paragraphs (c) and (d) and by alphabetically inserting in paragraphs (c) and (d) new items, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) Residues of the following materials are exempted from the requirement of a tolerance when used in accordance with good agricultural practice as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest:

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Acetic anhydride		Solvent, cosolvent.
* * *	* * *	* * *
Ammonium sulfate		Solid diluent, carrier.
* * *	* * *	* * *
Calcium citrate		Solid diluent, carrier.
* * *	* * *	* * *
Calcium phosphate		Do.
* * *	* * *	* * *
α-Cellulose		Do.
* * *	* * *	* * *
Citrus meal		Do.
* * *	* * *	* * *
Cod liver oil		Solvent, cosolvent.
* * *	* * *	* * *
Corn meal		Solid diluent, carrier.
Corn oil		Solvent, cosolvent.
* * *	* * *	* * *
Dimethylpolysiloxane (as defined in § 121.1099)		Defoaming agent.
* * *	* * *	* * *
Ferric sulfate		Solid diluent, carrier.
Fish meal		Do.
Fish oil		Solvent, cosolvent.
* * *	* * *	* * *
Hydroxypropyl methylcellulose		Thickener.
* * *	* * *	* * *
Lard		Solid diluent, carrier.
* * *	* * *	* * *
Magnesium oxide		Do.
* * *	* * *	* * *
Magnesium stearate		Surfactant.
* * *	* * *	* * *
Oatmeal		Solid diluent, carrier.
Oats		Do.
* * *	* * *	* * *
Palmitic acid		Diluent.
* * *	* * *	* * *
Polymerized sodium methacrylate		pH control.
* * *	* * *	* * *
Potassium chloride		Solid diluent, carrier.
* * *	* * *	* * *
Potassium phosphate		Buffer.
Propionic acid		Catalyst.
* * *	* * *	* * *
Propylene glycol alginate (as defined in § 121.1015)		Defoaming agent.
* * *	* * *	* * *
Sand		Solid diluent, carrier.
* * *	* * *	* * *
Sodium bicarbonate		Neutralizer.
* * *	* * *	* * *
Sodium chloride		Solid diluent, carrier.
* * *	* * *	* * *
Sorbitan fatty acid esters (fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids) and their poly(oxyethylene) derivatives; the poly(oxyethylene) content averages 16-20 moles.		Surfactants, related adjuvants of surfactants.
* * *	* * *	* * *
Soybean oil		Solvent, cosolvent.
Starch (potato, tapioca, and wheat)		Solid diluent, carrier.
Stearic acid		Diluent.
* * *	* * *	* * *
1,1,1-Trichloroethane		Solvent, cosolvent.
* * *	* * *	* * *
Xanthan gum		Thickener.
* * *	* * *	* * *

(d) The following materials are exempted from the requirement of a tolerance when used in accordance with good agricultural practice as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops only:

Inert ingredients	Limits	Uses
Acetonitrile	Not more than 0.5% of pesticide formulation.	Solvent for blended emulsifiers in all pesticides used before crop emerges from soil and in herbicides before or after crop emerges.
• • •	• • •	• • •
Aluminum stearate		Defoamer.
• • •	• • •	• • •
Boric acid		Sequestrant.
• • •	• • •	• • •
Butyl stearate		Defoamer.
• • •	• • •	• • •
Chloroform		Solvent.
Corn		Attractant.
• • •	• • •	• • •
n-Decyl alcohol		Solvent, cosolvent.
Diacetone alcohol		Deactivator, solvent for formulations used before crop emerges from soil.
• • •	• • •	• • •
Diethanolamine		Stabilizer, inhibitor for formulations used before crop emerges from soil.
Diethylene glycol		Deactivator for formulations used before crop emerges from soil.
• • •	• • •	• • •
Epichlorohydrin	Not more than 2% of pesticide formulation.	Stabilizer for all pesticides used before crop emerges from soil and in soil fumigants before or after crop emerges.
Ethanol		Solvent, cosolvent.
• • •	• • •	• • •
Ethylene glycol		Antifreeze, deactivator for all pesticides used before crop emerges from soil and in herbicides before or after crop emerges.
• • •	• • •	• • •
Ethylene glycol monomethylether		Solvent for formulations used before crop emerges from soil.
• • •	• • •	• • •
2-Ethylhexanol		Cosolvent, defoamer, solvent for all pesticides used before crop emerges from soil and in herbicides before or after crop emerges.
• • •	• • •	• • •
Fluorapatite		Solid diluent, carrier.
• • •	• • •	• • •
Fumaric acid		Acidulant.
Gluconic acid (and sodium salt)		Sequestrant.
Hexamethylenetetramine		Stabilizer for carriers in solid pesticide formulations.
• • •	• • •	• • •
n-Hexyl alcohol		Solvent, cosolvent.
α-Hydro-*omega*-hydroxypoly-(oxypropylene) (mol. wt. 2000).		Component of defoamers.
Hydroxypropyl cellulose		Thickener.
Isoamyl acetate	Not more than 0.5% of pesticide formulation.	Odor-masking agent.
Isobornyl acetate		Solvent.
Isophorone		Solvent for formulations used before crop emerges from soil.
• • •	• • •	• • •
Locust bean gum		Component of defoamers.
Mesityl oxide		Solvent for formulations used before crop emerges from soil.
• • •	• • •	• • •
Methyl *p*-hydroxybenzoate		Preservative for formulations.
• • •	• • •	• • •
Methyl oleate		Surfactant.
2-Methyl-2,4-pentanediol		Solvent for formulations used before crop emerges from soil.
Methyl violet 2B	Not more than 0.01% of pesticide formulation.	Dye for formulations used before crop emerges from soil.
Methylene blue		Dye for formulations used on cotton.
• • •	• • •	• • •
n-Octyl alcohol		Solvent, cosolvent.
α-Oleoyl-*omega*-(oleoyloxy) poly(oxyethylene) derived from α-hydro-*omega*-hydroxypoly (oxyethylene) (mol. wt. 600).		Component of defoamers.
• • •	• • •	• • •
Phenol		Solvent, cosolvent.
Polyethylene, oxidized (as defined in § 121.1142(a))		Surfactants, related adjuvants of surfactants.
• • •	• • •	• • •
Polyvinyl acetate (as defined in § 121.1059)		Adhesive.
n-Propanol		Solvent for blended emulsifiers.
Propyl *p*-hydroxybenzoate		Preservative for formulations.
Propylene dichloride		Solvent for formulations used before crop emerges from soil.
Rosin, dark wood (as defined in § 121.2592)		Surfactants, related adjuvants of surfactants.
Rosin, gum		Do.
Rosin, tall oil		Do.
Soapbark (quillaja)		Dispersing agent, wetting agent.
• • •	• • •	• • •
Sodium fluoride	Not more than 0.25% of pesticide formulation.	Stabilizer, carrier for formulations used before crop emerges from soil.
Sodium metaborate		Sequestrant.
• • •	• • •	• • •
Sodium nitrate		Solid diluent.
Sodium nitrite	Not more than 3% of pesticide formulation.	Stabilizer, inhibitor.
• • •	• • •	• • •
Sorbic acid (and potassium salt)		Preservative for formulations.
Tannin		Dispersing agent.
N,N,N',N'-Tetrakis-(2-hydroxypropyl) ethylenediamine.		Stabilizer for formulations used before crop emerges from soil.
• • •	• • •	• • •
Triethanolamine		Stabilizer, inhibitor for formulations used before crop emerges from soil.
Triethylene glycol		Deactivator.
Triethyl phosphate		Stabilizer for formulations used before crop emerges from soil.
Wheat		Attractant.
Wheat flour		Do.
• • •	• • •	• • •

2. To eliminate duplication and overlapping when the above substances are added to the table in § 180.1001(c), the following item is deleted therefrom:

Sorbitan fatty acid esters (fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids) and their poly(oxyethylene) derivatives; the poly(oxyethylene) content averages 20 moles.

3. Prior to publication of the aforementioned proposal, a request was submitted to amend § 180.1001 by extending the limits of the first item "α-Alkyl(C_{12}-C_{13}) - *omega* - hydroxypoly(oxyethylene) * * *" in the table in paragraph (d). Accordingly, §180.1001(d) is amended by revising said item, as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
α-Alkyl(C_{12}-C_{18})-*omega*-hydroxy-poly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; the poly(oxyethylene) content averages 3-20 moles.	----------	Surfactants, related adjuvants of surfactants.
* * *	* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20250, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (12-22-71).

(Sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a (c), (e))

Dated: December 13, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-18523 Filed 12-21-71;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18397; FCC 71-1234]

PART 0—COMMISSION ORGANIZATION

PART 74—EXPERIMENTAL, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

CATV Systems

Order. In the matter of amendment of Part 74, Subpart K, of the Commission's rules and regulations relative to community antenna television systems; and inquiry into the development of communications technology and services to formulate regulatory policy and rule making and/or legislative proposals; Docket No. 18397.

1. In the Third Report and Order in Docket No. 18397, FCC 71-1035, 32 FCC 2d 13, released October 14, 1971, the Commission adopted FCC Form 326, entitled "CATV Annual Financial Report." The Commission previously indicated in the reconsideration of the Report and Order in Docket No. 18802, FCC 71-311, 28 FCC 2d 139, which concerned, inter alia, the adoption of an annual fee for cable television systems, that payment of this fee should accompany the filing of Form 326. Pending the adoption of that form, the Commission issued FCC Form 326-A, entitled "Computation of CATV Annual Fee," to simplify calculation of the appropriate fee and fee collections (cable operators were requested to file the form with the appropriate fee attached).[1]

2. The Commission has determined that it would not be advisable to process financial data and fees via the same form, since different procedures and goals are involved in processing each of them. And we note that although annual fees are due on or before April 1 of each year, only the annual financial reports of cable systems which commenced operations on or after December 1, 1971, are due on April 1; reports for other systems may be filed within 90 days of the close of the system's fiscal year. Hence, we have concluded that the public interest would be served by the continued use of FCC Form 326-A to accompany payment of the cable television annual fee, instead of Form 326.

3. We are modifying Form 326-A to provide for the attachment of preprinted information labels related to the recipient systems, and to delete instructions which applied only during the first year of implementation of the annual fee. Also, in view of the proprietary nature of the quarterly subscriber data requested by Form 326-A, we are amending § 0.457(d) of the Rules to make it clear that the computation forms will not be routinely available for public inspection. Authority for adoption of rules necessary to implement this order is set forth in sections 4 (i), (j), and (k), 303, and 403 of the Communications Act of 1934, as amended. The necessary amendments to Part 0 and Part 74 of the Commission's rules are contained below.

Accordingly, it is ordered, That, effective January 21, 1972, Part 0 and Part 74 of the Commission's rules and regulations are amended as set forth below.

(Secs. 4, 303, 403, 48 Stat., as amended, 1066, 1082, 1094; 47 U.S.C. 154, 303, 403)

Adopted: December 8, 1971.

Released: December 20, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

Part 0 and Part 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

1. Section 0.457(d) (1) is amended by adding subparagraph (iv) as follows:

§ 0.457 Records not routinely available for public inspection.

(d) * * *
(1) * * *

(iv) Annual fee computation forms submitted for cable television systems pursuant to § 74.1125 of this chapter.

2. Section 74.1125 is added to Part 74, to read as follows:

§ 74.1125 Computation of cable television annual fee.

A "Computation of Cable Television Annual Fee" (FCC Form 326-A) shall be filed with the Commission for each cable television system, as defined in § 74.1101 on or before April 1 of each year, for the preceding calendar year, to accompany payment of the cable television annual fee. See §§ 1.1101 and 1.1116 of this chapter.

[FR Doc.71-18674 Filed 12-21-71;8:47 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-7; Notice No. 71-33]

PART 391—QUALIFICATIONS OF DRIVERS

Drivers of Farm and Lightweight Vehicles

On June 8, 1971, the Director of the Bureau of Motor Carrier Safety issued a notice of proposed rule making, in

[1] Public Notice, FCC 71-231, 28 FCC 2d 12.

[2] Commissioner Johnson concurring in part and dissenting in part, and issuing a statement to be released at a later date.

which he announced that he was considering exempting drivers of certain farm and light vehicles from application of some or all of the rules in Part 391 of the Motor Carrier Safety Regulations (36 F.R. 11223). The notice sought the comments of interested persons on the proposed amendments to the driver-qualification rules.

Over 5,500 comments were received. The Bureau has analyzed these comments as well as other relevant data. A large number of comments came from individual farmers who are evidently misinformed about the nature and purport of the driver-qualification regulations. They do not apply and have never applied, to operations which are wholly intrastate or to the use of light trucks for personal trips. The substance of comments from farmers and organizations representing farm and allied interests which dealt with the impact of the regulations on farmers who operate commercial motor vehicles in interstate or foreign commerce as private carriers will be discussed in more detail below.

In the notice, the Director proposed to institute a blanket exemption for drivers of vehicles weighing 10,000 pounds or less when loaded. Comments from the for-hire segment of the trucking industry voiced considerable opposition to this aspect of the proposal. It was noted that lightweight vehicles represent a large proportion of the fleet operated by that segment of the industry, and that a blanket exemption would put pressure on carriers to utilize otherwise unqualified people to drive lightweight vehicles. A trade association of private carriers reported that a survey of its membership showed that 40 percent of the private carriers who responded opposed institution of an across-the-board exemption for drivers of vehicles with a gross weight of 10,000 pounds or less.

On the other hand, carriers engaged in the movement of passenger cars under their own power argued persuasively that their operations pose no more significant a risk to the public safety than normal passenger car driving, and that they should not be burdened with compliance with rules designed to cover drivers of heavier vehicles. Farmers, also, felt that movements of their products and supplies in lightweight vehicles should be exempted. Finally, there were comments from public utilities, construction companies, and other firms that use light trucks as adjuncts of their businesses, who said that the existing minimum age requirement (21 years old or older) made it difficult for them to hire and train younger employees.

In response to these comments, and in light of the Bureau's consideration of the issues involved, the Director is limiting the blanket exemption to drivers of passenger cars (except taxicabs) and to drivers of lightweight vehicles used for transporting agricultural products or supplies. The minimum age for drivers of other lightweight vehicles has been reduced to 18. The lightweight-vehicle exemptions do not apply to drivers who transport passengers for hire or who transport hazardous materials. There were no substantial objections to these conditions as they appeared in the proposal, and they are therefore being retained.

The Director has instituted a number of other exemptions for drivers of motor vehicles controlled and operated by farmers. As was the case in the proposal, the primary mechanism for accomplishing this objective is the definition of a "farm vehicle driver." The new rules incorporate two major changes from the version of the definition as it appeared in the notice of proposed rule making. First, § 391.3(d)(2) has been modified so that drivers who transport agricultural products would not lose their exempt status merely because their trips do not originate or terminate at a farm. Agricultural groups, supported by the Department of Agriculture, sought this change so that a farmer could transport his products to market under the exemption even though there is a break in the transportation. As the language now appears, a farm vehicle driver would be exempt from application of the driver-qualification rules even though the movement originates from a storage point, warehouse, or processing plant. The second significant change has been a modification of the 150-mile limitation on the range of farm vehicle drivers. § 391.3(d)(5) has been changed so that the limitation is inapplicable to drivers of vehicles weighing less than 10,000 pounds when loaded. In addition, beekeepers who must make long-distance seasonal movements, and who would suffer unusual hardship under the 150-mile limitation, have been granted a blanket exemption covering those seasonal movements. Although other segments of farming sought total removal of the 150-mile limitation, there was no showing that it would work specific and undue hardships on their activities to require the use of qualified drivers to operate heavy vehicles over long distances.

The exemption for drivers of vehicles used to transport farm harvesting machinery has been expanded to apply also to the transportation of custom-harvested crops to storage or market. The language of the exemption has been modified to make it clear that primary movements of harvesting equipment (e.g., from factories or dealers) are not exempt. The intention here is to grant exemption only to drivers engaged in so-called custom-harvesting operations. A request to extend the exemption to other custom farm operations has been denied; there was no showing that persons engaged in those operations would suffer the same degree of hardship as custom harvesters if their drivers were required to be fully qualified.

A number of editorial changes have been made for the purpose of improving clarity and organization of the rules.

In consideration of the foregoing, Part 391 of the Motor Carrier Safety Regulations (Subpart B of Chapter III in title 49, CFR) is amended as set forth below.

Since these amendments relieve restrictions and because it is desirable that they take effect on the date the present, limited, exemption for farm vehicle drivers expires, there is good cause to make them effective less than 30 days after their publication. These amendments are effective on January 1, 1972.

(Sec. 204, Interstate Commerce Act, 49 U.S.C. 304, sec. 6, Department of Transportation Act, 49 CFR 1655, delegations of authority at 49 CFR 1.48 and 389.4)

Issued on December 17, 1971.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

I. Section 391.2 is revised to read as follows:

§ 391.2 General exemptions.

(a) *Intracity operations.* The rules in this part do not apply to a driver wholly engaged in exempt intracity operations as defined in § 390.16 of this chapter.

(b) *Passenger car operations.* The rules in this part do not apply to a driver who drives only a motor vehicle that—

(1) Is a passenger-carrying vehicle built on a passenger car chassis with a seating capacity of 10 or less persons, including the driver; and

(2) Is not transporting passengers for hire; and

(3) Is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title.

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load, of more than 10,000 pounds. [For limited exemptions for farm vehicle drivers of heavier articulated vehicles see § 391.67.]

(d) *Farm custom operations.* The rules in this part do not apply to a driver who drives a motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(e) *Apiarian industries.* The rules in this part do not apply to a driver who is operating a motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

II. Section 391.3 is amended by adding a new paragraph (d) at the end thereof, reading as follows:

§ 391.3 Definitions.

* * * * *

(d) The term "farm vehicle driver" means a person who drives only a motor vehicle that is—

(1) Controlled and operated by a farmer; and

(2) Being used to transport either—

(i) Agricultural products; or

(ii) Farm machinery, farm supplies, or both, to or from a farm; and

(3) Not being used in the operations of a common or contract carrier; and

(4) Not carrying hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title; and

(5) Either—

(i) A vehicle having a gross weight, including its load, of 10,000 pounds or less; or

(ii) A vehicle being used within 150 miles of the farmer's farm.

III. The introductory phrase of § 391.11(b) is amended to read as follows:

§ 391.11 Qualification of drivers.

(a) * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he—

* * * * *

IV. The heading of Subpart G is amended to read as follows:

Subpart G—Limited Exemptions

V. A new § 391.62 is added to Subpart G, reading as follows:

§ 391.62 Drivers of certain lightweight vehicles; minimum age.

A person who is 18 years of age or older and who is otherwise qualified to drive a motor vehicle under the rules in this part may drive a motor vehicle that—

(a) Has a gross weight, including its load, of 10,000 pounds or less; and

(b) Is not transporting passengers for hire; and

(c) Is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title.

§ 391.11(b)(1) (relating to minimum age of drivers) does not apply to that person.

VI. Section 391.67 is revised to read as follows:

§ 391.67 Drivers of articulated (combination) farm vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 391.3(d)) who is 18 years of age or older and who drives an articulated motor vehicle:

(a) Subparagraphs (1), (8), (10), (11), and (12) of § 391.11(b) (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests and written examinations).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his person before January 1, 1973.

(e) Subpart F (relating to maintenance of files and records).

[FR Doc.71-18680 Filed 12-21-71;8:51 am]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 28—PUBLIC ACCESS, USE AND RECREATION

Missisquoi National Wildlife Refuge, Vermont

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (12-22-71).

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

VERMONT

MISSISQUOI NATIONAL WILDLIFE REFUGE

Travel by motor vehicle or on foot is permitted on designated travel routes for the purpose of nature study, photography, hiking, and sightseeing, during daylight hours. Pets are permitted on a leash not over 10 feet in length. Picnicking is permitted in designated areas where facilities are provided. Launching of boats and parking of boat trailers is permitted in designated areas. Fishing and hunting may be permitted under special regulations.

The refuge area, comprising 4,680 acres, is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office and Courthouse, Boston, Mass 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

EDWIN H. CHANDLER,
Refuge Manager.

DECEMBER 14, 1971.

[FR Doc.71-18634 Filed 12-21-71;8:45 am]

PART 33—SPORT FISHING

Bosque del Apache National Wildlife Refuge, N. Mex.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (12-22-71).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW MEXICO

BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bosque del Apache National Wildlife Refuge, N. Mex. is permitted in areas open to public use. These open areas, comprising 1,800 acres, are delineated on maps available at refuge headquarters, San Antonio, N. Mex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge is as follows:

Unit 18 a, b, c, and d and Unit 15b all year round from dawn till dusk.

All units designated as open, including Units 18 a, b, c, and d and Unit 15b, 24 hours a day from May 1 to September 30.

(2) The use of boats or floating devices is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through March 31, 1973.

RICHARD W. RIGBY,
Refuge Manager, Bosque del Apache National Wildlife Refuge, San Antonio, N. Mex.

DECEMBER 14, 1971.

[FR Doc.71-18682 Filed 12-21-71;8:49 am]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Office of Oil and Gas, Department of the Interior

[Oil Import Regulation 1 (Rev. 5), Amdt. 37]

OI REG. 1—OIL IMPORT REGULATION

Miscellaneous Amendments—Oil Imports

This amendment 37 amends sections 9, 10, 11, 13, 15, 21, 22, 28, and 30 of Oil Import Regulation 1 (Revision 5).

The amendments to sections 9, 10, and 11 provide for allocations to petrochemical plants and refiners in Districts I-IV and in District V for the allocation period beginning January 1, 1972. Paragraph (c) of section 9 (allocations to petrochemical plants) has been amended to make it clear that the certification required in the second sentence pertains only to the additional unfinished oils which a person is permitted to import above the stated limits. In section 10 (allocations to refiners in Districts I-IV) and in section 11 (allocations to refiners in District V), while there have been minor changes in the percentages in the increments of the graduated scale in each section, the proportionate relation among the percentages in each scale is substantially unchanged. The proposal, published in the FEDERAL REGISTER for September 21, 1971 (36 F.R. 18750), to adopt a two step graduated scale in section 10, was, after consideration of the comments, not adopted. The changes in sections 10 and 11 were required because of the difference in the amounts of imports available for allocation. In view of the

fact that no significant changes have been made in sections 9, 10, or 11 and of the necessity to make allocation and issue licenses before January 1, 1972, it has been determined that it is unnecessary to give notice of proposed rulemaking respecting, or to delay the effective date of, the amendments to these sections.

The amendment to section 13 provides an allocation of finished products to the Department of Defense for the next allocation period. The new paragraph (e) added to section 15 (allocations of crude oil and unfinished oils—Puerto Rico) implements the provisions of amendatory Proclamation 4092, providing that no penalties be incurred for shipments of No. 2 fuel oil from Puerto Rico within a stated amount; the new paragraph (e) follows the proposal published in the FEDERAL REGISTER for November 20, 1971 (36 F.R. 22163).

Paragraph (e) of section 21 has been amended to make available to the Oil Import Appeals Board for the next allocation period imports of crude oil, unfinished oils and finished products of 35,000 barrels daily in Districts I–IV and 5,000 barrels daily in District V.

In the FEDERAL REGISTER for September 21, 1971 (36 F.R. 18750), a proposal was published to amend paragraph (k) of section 22 of Oil Import Regulation 1 (Revision 5), as amended, defining "refinery inputs," to specify the extent and nature of processing which unfinished oils imported pursuant to an allocation must undergo before such imported unfinished oils would qualify as "refinery inputs" as a basis for making allocations. Fifteen timely comments with respect to the proposed rule making were received. Six comments favored the proposal as written; one recommended that the existing definition be maintained, noting that the new proposal was too restrictive. Of the remaining eight, two endorsed the proposal, but all suggested modifications to define even more specifically the extent and nature of the processing. All comments were carefully considered, and paragraph (k) of section 22 has been amended along the lines of the proposal, after a revision of the proposed provision in the interest of clarity and specificity. Paragraph (k) of section 22, as amended, will be effective with respect to the "input year" October 1, 1971 through September 30, 1972, and for succeeding years.

Paragraph (a) of section 28 (allocations of low sulphur residual fuel oil—District V) has been amended to make it clear that (except with respect to importation from foreign trade zones) the section includes imports of low sulphur crude oil which is to be used as fuel without further processing other than by blending by mechanical means. Such oil is residual fuel oil within the definition set forth in clause (7) of section 22 of Oil Import Regulation 1(Revision 5).

In the FEDERAL REGISTER of November 20, 1971 (36 F.R. 22163), notice was given of a proposal for allocation of No. 2 fuel oil into District I to independent deepwater terminal operators of 45,000 barrels per day for the allocation period January 1, 1972 through December 31, 1972, and for succeeding allocation periods. Comments were received from 13 persons, and all comments were considered and evaluated. Pursuant to the comments, subparagraph (c) (1) (ii) and subparagraph (f) (3) were revised to refer specifically to holders of allocations under section 9, 10, or 25, and the provisions of pargraph (h) respecting exchanges of crude oil for No. 2 fuel oil have been clarified. With the addition of some editorial changes and the correction of inadvertent errors, section 30 has been amended as proposed.

Accordingly, sections 9, 10, 11, 13, 15, 21, 22, 28, and 30 of Oil Import Regulation 1 (Revision 5) are amended as set forth below. This Amendment 37 shall be effective immediately.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

DECEMBER 20, 1971.

I concur: December 20, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

1. Section 9 of Oil Import Regulation 1 (Revision 5), 36 F.R. 1476, 1893, is amended to read in its entirety as follows:

Sec. 9 Allocations; petrochemical plants; Districts I–IV, District V.

(a) For the allocation period January 1, 1972 through December 31, 1972, each eligible person with a petrochemical plant in Districts I–IV shall receive an allocation of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in these districts during the year ending September 30, 1971, multiplied by 11.2 percent.

(b) For the allocation period January 1, 1972 through December 31, 1972, each eligible person with a petrochemical plant in District V shall receive an allocation of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in this district during the year ending September 30, 1971, multiplied by 11.9 percent.

(c) No allocation for Districts I–IV made pursuant to this section or section 25 shall entitle a person to a license which will allow the importation of unfinished oils in excess of 15 percent of the allocation, and no allocation for District V made pursuant to this section or section 25 shall entitle a person to a license which will allow the importation of unfinished oils in excess of 25 percent of the allocation. However, a person obtaining an allocation of imports of crude oil and unfinished oils pursuant to this section or section 25 may petition the Director to adjust the percentage of imports of unfinished oils upward to 100 percent of such person's allocation if the petitioner certifies that the additional imported unfinished oils will not be exchanged, that the additional unfinished oils will be processed entirely in the petitioner's own petrochemical plant, and that more than 50 percent of the yields (by weight) from the unfinished oils will be petrochemicals or that more than 75 percent (by weight) of recovered product output will consist of petrochemicals.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

2. Section 10 of Oil Import Regulation 1 (Revision 5), 36 F.R. 52, 16659, 17346, is amended to read in its entirety as follows:

Sec. 10 Allocations; refiners; Districts I–IV.

(a) For the allocation period January 1, 1972 through December 31, 1972, the Director shall allocate, as provided in paragraph (b) of this section, approximately 657,000 b/d of imports of crude oil into Districts I–IV among eligible persons having refinery capacity in these districts.

(b) Each eligible applicant shall receive an allocation of imports of crude oil based on refinery inputs for the year ending September 30, 1971, and computed according to the following schedule:

Average b/d input		Percent of input		Number of days
0–10,000 10–30,000 30–100,000 100,000 plus	×	21.7 13.0 7.6 3.8	×	365

(c) Under an allocation made pursuant to paragraph (b) of this section, unfinished oils may be imported, but imports of such oils shall not exceed 15 percent of the allocation. Within such 15 percent, a maximum quantity of imports not exceeding 1 percent of the total allocation may be imported in the form of finished products, provided that prior written notification is given to the Director of each entry proposed to be made. Finished products imported pursuant to this paragraph may not be exchanged.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred, and except as this regulation may provide otherwise, no license issued under such an allocation shall permit the importation of Canadian imports as defined in section 1A of Proclamation 3279, as amended.

3. Section 11 of Oil Import Regulation 1 (Revision 5), 36 F.R. 4982, 16659, is amended to read as follows:

Sec. 11 Allocations; refiners; District V.

(a) For the allocation period January 1, 1972 through December 31, 1972, the Director shall allocate, as provided in paragraph (b) of this section, approximately 270,000 b/d of imports of crude oil into District V among eligible persons having refinery capacity in that district.

(b) Each eligible applicant shall receive an allocation of imports of crude oil based on refinery inputs for the year ending September 30, 1971, and computed according to the following schedule:

Average b/d input	Percent of input	Number of days
0–10,000 10–30,000 30,000 plus	67.5 16.9 5.6	366

(c) Under an allocation made pursuant to paragraph (b) of this section, unfinished oils may be imported, but imports of such oils shall not exceed 25 percent of the allocation. Within such 25 percent, a maximum quantity of imports not exceeding 1 percent of the total allocation may be imported in the form of finished products, provided that prior written notification is given to the Director of each entry proposed to be made. Finished products imported pursuant to this paragraph may not be exchanged.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

4. Paragraph (a) of section 13 of Oil Import Regulation 1 (Revision 5), 36 F.R. 52, is amended to read as follows:

Sec. 13 Finished products.

(a) For the allocation period January 1, 1972 through December 31, 1972, there is allocated to the Department of Defense 20,000 b/d of imports of finished products into Districts I–IV and 7,500 b/d of imports of finished products into District V. For the same allocation period, 15,000 b/d of finished products have been allocated pursuant to subparagraph (4) of paragraph (b) of section 3 of Proclamation 3279, as amended.

* * * * *

5. A new paragraph (e), reading as follows, is added to section 15 of Oil Import Regulation 1 (Revision 5), 31 F.R. 7745, 33 F.R. 3062:

Sec. 15 Allocations of crude oil and unfinished oils—Puerto Rico.

* * * * *

(e) No person who manufactures in Puerto Rico No. 2 fuel oil from crude oil produced in the Western Hemisphere and who has an allocation under this section shall incur a reduction of an allocation pursuant to paragraph (b) of this section, or be deemed to have violated a condition of an allocation, by reason of a shipment of such oil to a person who holds an allocation under section 30 of this regulation and who has relinquished an amount of the allocation equal to the amount to be shipped, so long as the total of all such shipments from Puerto Rico during a calendar year does not exceed an average of 5,000 barrels per day. Shipments of No. 2 fuel oil attributable to a person who holds an allocation under this section will be charged against the limitation of 5,000 b/d for a calendar year only to the extent that the total of shipments into Districts I–IV of unfinished oils and finished products (other than residual fuel oil to be used as fuel) attributable to such person during the calendar year (1) exceeds the quantity of such shipments in the year 1965, if the person holds an allocation under paragraph (a), or (2) exceeds the quantity of such shipments limited in his allocation, if the person holds an allocation under paragraph (c) of this section.

6. Paragraph (e) of section 21 of Oil Import Regulation 1 (Revision 5), 36 F.R. 52, is amended to read as follows:

Sec. 21 Appeals.

* * * * *

(e) For the allocation period January 1, 1972 through December 31, 1972, 35,000 b/d of imports into Districts I–IV of crude oil and unfinished oils (including Canadian imports as defined in section 1A of Proclamation 3279, as amended) and finished products and 5,000 b/d of imports into District V of crude oil, unfinished oils, and finished products are made available to the Oil Import Appeals Board.

7. Paragraph (k) of section 22 of Oil Import Regulation 1 (Revision 5), 36 F.R. 52, is amended to read as follows:

Sec. 22 Definitions.

* * * * *

(k) (1) Except as provided in subparagraph (2) of this paragraph, "refinery inputs" means feedstocks charged to refinery capacity and include only:

(i) Crude oil,

(ii) Unfinished natural gas products, and

(iii) Unfinished oils imported pursuant to an allocation if, and only if, (*a*) such imported unfinished oils are processed in a distillation unit with a resulting yield of at least two distinct finished products or unfinished oils, two of which must be equal to not less than 10 percent of the total charge of such imported unfinished oils to the distillation unit, or (*b*) such imported unfinished oils are subjected in catalytic or thermal conversion units to such processes as alkylation, coking, cracking, hydrofining, hydrodesulfurization, isomerization, polymerization, or reforming, or (*c*) such imported unfinished oils are processed by dewaxing or deasphalting. Different grades or specifications of finished products or unfinished oils will not constitute distinct finished products or unfinished oils for the purposes of subdivision (iii) (*a*) of this subparagraph.

(2) "Refinery inputs" do not include inputs of crude oil or unfinished oils imported pursuant to paragraph (e), (f), or (h) of section 1A of Proclamation 3279, as amended, or, with respect to refinery inputs in District V, inputs of crude oil or unfinished oils imported pursuant to clause (4) of paragraph (a) of section 1 of Proclamation 3279, as amended.

* * * * *

8. Paragraph (a) of section 28 of Oil Import Regulation 1 (Revision 5), 34 F.R. 1138, is amended to read as follows:

Sec. 28 Allocations of low sulphur residual fuel oil—District V.

(a) This section provides for the making of allocations of imports into District V of low sulphur residual fuel oil to be used as fuel in District V. As used in this section 28, "low sulphur residual fuel oil" means (1) residual fuel oil to be used as fuel which is manufactured or produced in a foreign area and which contains not more than five-tenths of one percent (0.5%) sulphur by weight, or (2) residual fuel oil to be used as fuel which is manufactured by facilities in a foreign trade zone located in District V and which has a sulphur content not exceeding the percent by weight required by local government requirements.

* * * * *

9. Section 30 of Oil Import Regulation 1 (Revision 5), 36 F.R. 52, is amended to read as follows:

Sec. 30 Allocations of No. 2 Fuel Oil—District I.

(a) For the purposes of this section:

(1) The term "No. 2 fuel oil" means a finished product which has the following physical and chemical characteristics:

Closed cup flash point °F.	Minimum 100.
Pour point °F.	Maximum 20.
Water and sediment, percent.	Maximum 0.10.
Carbon residue on 10 percent Residuum percent.	Maximum 0.35.
Distillation temperature °F. 90 percent point.	Maximum 675. Minimum 540.
Viscosity, Saybolt Universal Seconds at 100° F.	Maximum 40.0. Minimum 33.0.
Gravity A.P.I.	Minimum 30.0.

(2) The term "Western Hemisphere" means North America, Central America, South America, and the West Indies.

(3) The term "deep water terminal" means a permanent land installation which:

(i) Consists of bulk storage tanks having not less than 100,000 barrels of operational capacity, pumps and pipelines used for storage, transfer and handling of No. 2 fuel oil;

(ii) Is on waterways that permit the safe passage to the installation of a tanker rated 15,000 cargo deadweight tons, drawing not less than 25 feet of water; and

(iii) Has a berth that will permit the delivery of No. 2 fuel oil into the installation by direct connection from a tanker rated at 15,000 cargo deadweight tons, drawing not less than 25 feet of water, and moored in the berth. Cargo deadweight tons represent the carrying capacity of a tanker, in tons of 2,240 pounds, less the weight of fuel, water, stores and other items necessary for use on a voyage.

(4) The term "throughput agreement" means a written agreement which provides for the delivery to a deep water terminal by a person of No. 2 fuel oil which he owns at the time of delivery to the terminal and for a right in such person to withdraw on call an identical quantity of such oil from the terminal. Any transaction between persons involving sales, purchases, or exchanges of No. 2 fuel oil which were designed to gain allocation benefits for a person who would not otherwise be eligible shall not be deemed to constitute a throughput agreement.

(b) For the allocation period January 1, 1972 through December 31, 1972, and in each succeeding allocation period, 45,000 b/d of imports of No. 2 fuel oil

which is manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere will be available for allocation in District I to eligible persons having qualified terminal inputs of No. 2 fuel oil in this district.

(c) (1) Except as provided in subparagraph (2) of this paragraph, a person shall be eligible for an allocation of imports into District I of No. 2 fuel oil under paragraph (e) of this section:

(i) If he is in the business in District I of selling No. 2 fuel oil and has under his management and operational control a deep water terminal which is located in District I and in which No. 2 fuel oil is handled, or

(ii) If he is in the business in District I of selling No. 2 fuel oil and has a throughput agreement with a deepwater terminal operator in District I who does not have a crude oil import allocation in Districts I–IV under section 9, 10, or 25 of this regulation.

(2) No person who has an allocation of imports into Districts I–IV of crude oil under sections 9, 10, or 25 of this regulation shall be eligible for an allocation under paragraph (e) of this section.

(d) A person seeking an allocation for the allocation period beginning January 1, 1972 under paragraph (e) of this section must file an application with the Director, on such form as he may prescribe, no later than seven days after publication of this section in the FEDERAL REGISTER. The application shall disclose such information as the Director may deem necessary in such detail as he may require. For succeeding allocation periods, applications shall be filed as required by section 5 of this regulation.

(e) (1) For the allocation period January 1, 1972 through December 31, 1972, and in each succeeding allocation period, each eligible applicant under this section shall receive an allocation of imports into District I of No. 2 fuel oil which has been manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere computed according to the following formula:

$$\frac{\text{Applicant's qualified terminal inputs (avg. b/d) for 12-month period ending September 30 preceding allocation period}}{\text{Avg. b/d of all qualified terminal inputs for 12-month period ending September 30 preceding allocation period}} \times 45{,}000 \text{ avg. b/d of No. 2 fuel oil.}$$

(2) The Director shall provide that each license issued under an allocation made pursuant to this paragraph (e) shall expire on the last day (December 31) of the allocation period.

(f) (1) As used in this paragraph (f), "base period" means the 12-month period ending on September 30 preceding the commencement of the allocation period for which the allocation is to be made.

(2) An eligible applicant may count as qualified terminal inputs quantities of No. 2 fuel oil:

(i) Which were delivered during the base period into a deep water terminal in District I which was under his management and operational control or into a deep water terminal with which the eligible applicant had a throughput agreement before the oil was delivered, if he owned the oil when it was placed in the terminal and if the delivery constituted the first delivery of that oil to a deep water terminal into District I; or

(ii) Which the applicant owned, sold to a Federal Agency or to an agency of a State or a political subdivision of a State, and delivered during the base period to a deep water terminal in District I for the account of such agency, providing such delivery constituted the first delivery of that oil to a deep water terminal in District I; or

(iii) Which was delivered to applicant's deep water terminal in District I as a first delivery into a deep water terminal in District I under a written agreement to purchase such oil and to which, pursuant to such agreement, the applicant took title, during the base period upon withdrawal by him from the terminal.

(3) For the purpose of this paragraph (f), storage of No. 2 fuel oil at a refinery in which the oil was produced or delivery of No. 2 fuel oil into a deep water terminal under the management and operational control of a person who has an allocation of imports of crude oil into Districts I–IV under section 9, 10, or 25 shall not be deemed to be a first delivery to a deep water terminal in District I.

(g) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred. Except as provided in paragraph (h) of this section, licenses issued under allocations made pursuant to this section shall permit the importation only of No. 2 fuel oil which is manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere. No. 2 fuel oil imported under an allocation made pursuant to this section or shipped from Puerto Rico to District I as provided in this section shall be sold for use as fuel in District I.

(h) A person holding an allocation under this section may obtain from the Director a license which will permit him to import crude oil produced in the Western Hemisphere into Districts I–IV in a quantity not exceeding the amount of such allocation, upon a certification to the Director, in such form as he may prescribe, that the allocation holder has entered into an agreement with a refiner in Districts I–IV under which the allocation holder will receive No. 2 fuel oil (in a ratio of not less than one barrel of No. 2 fuel oil for each barrel of crude oil) in exchange for such crude oil so that an amount of No. 2 fuel oil at least equal to that covered by the license will be used in District I. Any license so issued shall be charged against the allocation made under this section.

(i) A person who holds an allocation under this section and who wishes to obtain No. 2 fuel oil from Puerto Rico and to relinquish all or part of his allocation as provided in paragraph (e) of section 15 of this regulation shall send the Director a letter (1) setting forth the quantity of the shipment, the name of his supplier in Puerto Rico, and the anticipated date of purchase in or shipment from Puerto Rico, and (2) relinquishing an amount of his allocation equal to the amount of the shipment. The person's license must accompany the letter. Upon receipt of such a letter, the Director shall accordingly, reduce the person's allocation, adjust and return the license, and notify the supplier that the action has been taken. However, the Director shall not act upon any such letter if such shipment from Puerto Rico would exceed the limitation of 5,000 b/d specified in paragraph (e) of section 15.

[FR Doc.71-18824 Filed 12-21-71;10:43 am]

Proposed Rule Making

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Regs. No. 4]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments in implementation of certain amendments to the Social Security Act made by Public Law 90–248 and title X of Public Law 91–172 update and expand Subpart E and Subpart J of Regulations No. 4 to provide:

1. Benefits payable to disabled widows and widowers are not reduced on account of earnings.
2. Deduction from disabled widow's and widower's benefits because of refusal to accept vocational rehabilitation services.
3. Revision of the annual earnings test rule.
4. Revised penalty deduction rules for failure to file timely reports of certain events (i.e., earnings over limitation amount, work outside the United States, and no child in care).
5. Extension of time to file required reports of earnings for valid reason.
6. Decision on extension of time to file earnings report is not an initial determination subject to administrative review processes.

In addition to these major revisions, the proposed amendments make certain technical changes for clarification, revise cross-references, and update examples of certain rules.

Prior to final adoption of the proposed amendments, consideration will be given to any data, comments, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, DC 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 3193, 330 Independence Avenue SW., Washington, DC 20201.

The proposed amendments are to be issued under the authority contained in sections 205 and 1102, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; section 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, and 1302.

Dated: October 20, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: December 16, 1971.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Regulations No. 4 of the Social Security Administration (20 CFR 404) are further amended as follows:

1. Paragraph (a) of § 404.415 is revised to read as follows:

§ 404.415 Deductions because of excess earnings; annual earnings test.

(a) *Deductions because of beneficiary's earnings.* Under the annual earnings test, deductions are made from monthly benefits (except disability insurance benefits, child's insurance benefits based on the child's disability, or widow's or widower's insurance benefits based on the widow's or widower's disability) payable to a beneficiary for each month in a taxable year beginning after December 1954 in which the beneficiary is under age 72 and to which excess earnings are charged under the provisions described in § 404.434 or § 404.444.

* * * * *

2. Paragraph (a) of § 404.416 is revised to read as follows:

§ 404.416 Amount of deduction because of excess earnings.

(a) *Taxable years beginning after December 1960, or ending after June 1961*—(1) *Deductions because of excess earnings of insured individual.* For taxable years beginning after 1960, or ending after June 1961, if excess earnings (as described in §§ 404.431, 404.432, and 404.433) of an insured individual are chargeable under the annual earnings test to a month, a deduction is made from the total of the benefits payable to him and to all other persons entitled (or deemed entitled—see § 404.420) on his earnings record for that month. This deduction is an amount equal to that amount of the excess earnings so charged. (See § 404.434 concerning the manner of charging such excess earnings.)

(2) *Deductions because of excess earnings of other beneficiary.* For taxable years beginning after 1960, or ending after June 1961, if benefits are payable to a person entitled (or deemed entitled—see § 404.420) on the earnings record of the insured individual, and such person has excess earnings (as described in §§ 404.431, 404.432, and 404.433) charged to a month, a deduction is made from his benefits only for that month. This deduction is an amount equal to the amount of the excess earnings so charged. (See § 404.434 for charging of excess earnings where both the insured individual and such person have excess earnings.)

* * * * *

3. Paragraph (a) of § 404.417 is revised to read as follows:

§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 7-day work test.

(a) *Deductions because of individual's activity.* Under the 7-day work test, a deduction is made from any monthly benefit (except disability insurance benefits, child's insurance benefits based on the child's disability, or widow's or widower's insurance benefits based on the widow's or widower's disability) payable to an individual for each month in a taxable year beginning after December 1954 in which he, while under age 72, engages in noncovered remunerative activity (see § 404.418) outside the United States on seven or more different calendar days. This deduction is an amount equal to the benefit payable to the individual for that month.

* * * * *

4. In § 404.422, paragraphs (c) and (d) are revised and renumbered (d) and (e) and paragraph (c) is added to read as follows:

§ 404.422 Deductions because of refusal to accept rehabilitation services.

* * * * *

(c) *Deductions because individual entitled to widow's or widower's insurance benefit based on disability refuses rehabilitation services*—(1) *Widow's insurance beneficiary.* A deduction is made from any benefits payable to an individual entitled to a widow's insurance benefit based on disability for each month in which she is under age 60 and refuses without good cause to accept rehabilitation services available to her under a State plan approved under the Vocational Rehabilitation Act.

(2) *Widower's insurance beneficiary.* A deduction is made from any benefits payable to an individual entitled to a widower's insurance benefit based on disability for each month in which he is under age 62 and refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act.

(d) *Amount of deduction.* The amount deducted from an individual's benefit for a month under the provisions of paragraph (a), (b), or (c) of this section is an

amount equal to the benefit otherwise payable for that month.

(e) *Good cause for refusal of rehabilitation services.* An individual may refuse to accept rehabilitation services (for the purposes of paragraph (a), (b), or (c) of this section) if his refusal is based on good cause. For example, an individual has good cause for refusing rehabilitation services where:

(1) The individual is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and care of any physical or mental impairment, on prayer or spiritual means through the application and use of the tenets or teachings of such church or sect; and

(2) His refusal to accept rehabilitation services was due solely to his adherence to the teachings or tenets of his church or sect.

5. Paragraph (a) of § 404.428 is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) *General.* In applying the annual earnings test (see § 404.415(a)) under the provisions of this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of his taxable year are included even though the individual is not entitled to benefits during all months of his taxable year. The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Administration that he has a different taxable year. A self-employed individual's taxable year is a calendar year unless he has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by (1) filing a claim for social security benefits, (2) attainment of age 18, 22, 65, 72, or any other age, (3) marriage, (4) termination of marriage, or (5) adoption. A taxable year ends with the death of the beneficiary. In such a case, the month of death is included as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings as defined in §§ 404.431, 404.432, 404.433, and 404.444.

* * * * *

6. Subparagraph (1) of paragraph (c) of § 404.429 is revised to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) *Wages defined.* Wages include the gross amount of an individual's wages rather than the net amount paid, after deductions by the employer for items such as taxes and insurance. For purposes of this section, an individual's wages are determined under the provisions of Subpart K of this part, except that, notwithstanding the provisions of Subpart K, wages also include:

(1) Remuneration of over $7,800 in calendar years beginning with 1968, or over $6,600 in calendar years 1966 and 1967, or over $4,800 in a calendar year 1959 through 1965, or over $4,200 in a calendar year 1955 through 1958; and

* * * * *

7. After § 404.429, new § 404.431 is added to read as follows:

§ 404.431 Excess earnings; defined for taxable years ending after December 1967.

For taxable years ending after December 1967, an individual's excess earnings are the amount of his earnings (as described in § 404.429) that exceed $140 times the number of months in his taxable year, except that his excess earnings do not include an amount equal to one-half of the first $1,200 of such excess amount (or equal to one-half of the entire excess amount if such excess amount is less than $1,200). Where the excess amount so figured is not a multiple of $1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

(a) $1 for each $2 of earnings over $1,680, up to and including $2,880; and

(b) $1 for each $1 of earnings over $2,880.

8. Section 404.432 is revised to read as follows:

§ 404.432 Excess earnings; defined for taxable years ending after December 1965 and before January 1968.

For taxable years ending after December 1965 and before January 1968, an individual's excess earnings are the amount of his earnings (as described in § 404.429) that exceed $125 times the number of months in his taxable year, except that his excess earnings do not include an amount equal to one-half of the first $1,200 of such excess amount (or equal to one-half of the entire excess amount if the excess is less than $1,200). Where the excess amount so figured is not a multiple of $1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

(a) $1 for each $2 of earnings over $1,500, up to and including $2,700; and

(b) $1 for each $1 over $2,700.

9. Paragraph (a) and subparagraph (3) of paragraph (b) of § 404.434 are revised to read as follows:

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* For purposes of imposing deductions for taxable years after 1960, the excess earnings (as described in §§ 404.431, 404.432, and 404.433) of an individual are charged to each month beginning with the first month the individual is entitled in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) *Amount of excess earnings charged.* * * *

(3) *Insured individual and person entitled (or deemed entitled) on his earnings record both have excess earnings.* If both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in §§ 404.431, 404.432, and 404.433), the insured individual's excess earnings are charged first against the total family benefits payable (or deemed payable) on his earnings record, as described in subparagraph (1) of this paragraph. Next, the excess earnings of a person entitled on the insured individual's earnings record are charged (as described in subparagraph (2) of this paragraph) against his own benefits, but only to the extent that his benefits have not already been charged with the excess earnings of the insured individual. See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

10. In § 404.435, subparagraph (6) of paragraph (a) is revised, and new subparagraph (7) is added following subparagraph (6), and paragraph (d) is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Taxable years ending after 1965.* Notwithstanding any of the provisions described in this subpart, an individual's excess earnings in a taxable year ending after 1965 are not charged to any month in which he:

* * * * *

(6) Did not engage in self-employment (see paragraphs (c) and (e) of this section) and did not render services for wages (see paragraph (d) of this section) of more than $140 in a taxable year ending after December 1967 (or $125 in a taxable year ending after 1965 and before January 1968); or

(7) Was entitled to a widow's or widower's insurance benefit based on disability.

* * * * *

(d) *Presumption regarding "services for wages."* With respect to paragraphs (a)(6) and (b)(6) of this section, and § 404.444(c)(5), an individual is presumed to have rendered services in any month for wages (as defined in § 404.429) of more than $140, or more than $125, or more than $100, or more than $80, whichever amount is applicable, until it is shown to the satisfaction of the Administration that the individual did not render services in such month for more than such amount.

11. In § 404.436, the introductory text is revised and paragraph (e) is added to read as follows:

§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

Under the annual earnings test, excess earnings (as described in §§ 404.431, 404.432, and 404.433) are not charged to any month in which an individual is

deemed not entitled to a benefit. A beneficiary (i.e., the insured individual or any person entitled or deemed entitled on the insured individual's earnings record) is deemed not entitled to a benefit for a month if he is subject to a deduction for that month because of:

* * * * *

(e) Refusal by a person entitled before age 60 to a widow's, or before age 62 to a widower's, insurance benefit based on disability to accept rehabilitation services (as described in § 404.422).

12. The introductory text of § 404.437 is revised to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

For purposes of deductions because of excess earnings (as described in §§ 404.431, 404.432, and 404.433), the benefit rate against which excess earnings are charged is the amount of the benefit (other than a disability insurance benefit) to which the person is entitled for the month:

* * * * *

13. Section 404.439 is revised to read as follows:

§ 404.439 Partial monthly benefits; excess earnings of the individual charged against his benefits and the benefits of persons entitled (or deemed entitled) to benefits on his earnings record.

Deductions are made against the total family benefits where the excess earnings (as described in §§ 404.431, 404.432, and 404.433) of an individual entitled to old-age insurance benefits are charged to a month and require deductions in an amount less than the total family benefits payable on his earnings record for that month (including the amount of a mother's or child's insurance benefit payable to a spouse who is deemed entitled on the individual's earnings record—see § 404.420). The difference between the total benefits payable and the deductions made under the annual earnings test for such month is paid (if otherwise payable under title II of the Act) to each person in the proportion that the benefit to which each is entitled (before the application of the reductions described in § 404.403 for the family maximum, § 404.407 for entitlement to more than one type of benefit, and section 202(q) of the Act for entitlement to benefits before retirement age) bears to the total of the benefits to which all of them are entitled, except that the total amount payable to any such person may not exceed the benefits which would have been payable to that person if none of the insured individual's excess earnings had been charged to that month.

Example. A is entitled to an old-age insurance benefit of $153. His wife and two children are each entitled to an original rate of $76.50, making a total unreduced benefit of $382.50. After A's excess earnings have been charged to the appropriate months in the year, there remains a partial benefit of $200 payable for October, apportioned as follows:

	Original rates	Fraction of total benefit	Maximum and normal rate payable	Partial benefit payable
A	$153.00	2/5	$153.00	$80
Wife	76.50	1/5	35.20	40
Child	76.50	1/5	35.20	40
Child	76.50	1/5	35.20	40
Total	382.50	5/5	258.40	200

14. Section 404.441 is revised to read as follows:

§ 404.441 Partial monthly benefits; insured individual and a person entitled (or deemed entitled) on his earnings record both have excess earnings.

Where both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in §§ 404.431, 404.432, and 404.433), their excess earnings are charged, and the partial monthly benefit is apportioned, as follows:

Example. M, his wife, and one child are entitled to combined total benefits of $280.80 based on M's old-age insurance benefit of $161.50. For the taxable year in question, M's excess earnings were $1,600 and his wife's excess earnings were $250. M had wages of more than $140 in all months of the year except February, while his wife had wages of more than $140 in all months of the year. After M's excess earnings have been charged to the appropriate months (all months through June except February), there remains a partial benefit payment for July of $84.80, which is allocated among M, his wife, and child in the ratio that the original benefit of each bears to the sum of all their benefits, $42.40, $21.20, and $21.20. His wife's excess earnings are charged against her full benefit for February $59.70, her partial benefit for July $21.20, her adjusted benefit for August and September, and from $49.70 of her October benefit, leaving a $10 benefit payable to her for that month.

15. Section 404.451 is revised to read as follows:

§ 404.451 Penalty deductions for failure to report within prescribed time limit noncovered remunerative activity outside the United States or not having care of a child.

(a) *Penalty for failure to report.* If an individual (or the person receiving benefits on his behalf) fails to comply with the reporting obligations of § 404.450 within the time specified in § 404.450, a penalty deduction is made from the individual's benefits in addition to the deduction described in § 404.417 (relating to noncovered remunerative activity outside the United States) or § 404.421 (relating to failure to have care of a child).

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report noncovered remunerative activity outside the United States or not having care of a child within the prescribed time is determined as follows:

(1) *First failure to make timely report.* The penalty deduction for the first failure to make a timely report is an amount equal to the individual's benefit or benefits for the first month for which the deduction event was not reported timely.

(2) *Second failure to make timely report.* The penalty deduction for the second failure to make a timely report is an amount equal to twice the amount of the individual's benefit or benefits for the first month for which the deduction event in the second failure period was not reported timely.

(3) *Subsequent failures to make timely reports.* The penalty deduction for the third or subsequent failure to file a timely report is an amount equal to three times the amount of the individual's benefit or benefits for the first month for which the deduction event in the third failure period was not reported timely.

(c) *Determining whether a failure to file a timely report is first, second, third, or subsequent failure*—(1) *Failure period.* A failure period runs from the date of one delinquent report (but initially starting with the date of entitlement to monthly benefits) to the date of the next succeeding delinquent report, excluding the date of the earlier report and including the date of the later report. The failure period includes each month for which a report becomes overdue during a failure period, but it does not include any month for which a report is not yet overdue on the ending date of such period. If "good cause" (see § 404.454) is found for the entire period, the period is not regarded as a failure period.

(2) *First failure.* When no penalty deduction under paragraph (b) of this section has previously been imposed against the beneficiary for failure to report noncovered remunerative activity outside the United States or for failure to report not having care of a child, the earliest month in the first failure period for which a report is delinquent and for which "good cause" (see § 404.454) for failure to make the required report is not found is considered to be the first failure.

(3) *Second failure.* After one penalty deduction under paragraph (b) of this section has been imposed against the beneficiary, the first month for which a report is delinquent in the second failure period is considered to be the second failure.

(4) *Third and subsequent failures.* After a second penalty deduction under paragraph (b) of this section has been imposed against the beneficiary, the first month for which a report is delinquent in the third failure period is considered to be the third failure. Subsequent failures will be determined in the same manner.

Example. M became entitled in January 1966 to mother's benefits; these benefits are not payable for any month in which the mother does not have a child in her care. M accepted benefits for each month from January 1966 through June 1967. In July 1967 she reported that she had not had a child in her care in January 1967. As she was not eligible for a benefit for any month in which she did not have a child in her care, M's July 1967 benefit was withheld to recover the overpayment she had received for January 1967, and the next payment she received was for August 1967. No penalty was imposed for her failure to make a timely report of the deduction event that occurred in January 1967 because it was determined that "good cause" existed.

In March 1968 M reported that she had not had a child in her care in September or October 1967; however, she had accepted benefit payments for each month from August 1967 through February 1968. Her benefits for March and April 1968 were withheld to recover the overpayment for September and October 1967. Also, it was determined that "good cause" was not present for M's failure to make a timely report of the deduction event that had occurred in September 1967. A penalty equal to her benefit for September 1967 was deducted from M's May 1968 payment since this was her "first failure" to report not having a child in her care. Payments to her then were continued.

On November 4, 1968, it was learned that M had not had a child in her care in November 1967 or in June, July, or August 1968 although she had accepted benefits for June through October 1968. Consequently, M's benefits for November 1968 through February 1969 were withheld to recover the 4 months' overpayment she received for months in which she did not have a child in her care. In addition, it was determined that "good cause" was not present for M's failure to report the deduction events, and a penalty was imposed equal to twice the amount of M's benefit for the month of June 1968. This was M's "second failure" to report not having a child in her care. No further penalty applied for November 1967 because that month was included in M's "first-failure" period.

(5) *Penalty deductions imposed under § 404.453 not considered.* A failure to make a timely report of earnings as required by § 404.452 for which a penalty deduction is imposed under § 404.453 is not counted as a failure to report in determining the first or subsequent failure to report noncovered remunerative activity outside the United States or not having care of a child.

(d) *Limitation on amount of penalty deduction.* Nothwithstanding the provisions described in paragraph (b) of this ions described in paragraph (b) of this section, the amount of the penalty deduction imposed for failure to make a timely report of noncovered remunerative activity outside the United States or for failure to report not having care of a child may not exceed the number of months in that failure period for which the individual received and accepted a benefit and for which a deduction is imposed by reason of his noncovered remunerative activity outside the United States or failure to have care of a child. (See § 404.458 for other limitations on the amount of the penalty deduction.)

16. Paragraph (a) of § 404.452 is revised and new paragraph (f) is added to read as follows:

§ 404.452 Reports to Administration of earnings; wages; net earnings from self-employment.

(a) *Conditions under which a report of earnings, wages, and net earnings from self-employment is required.* An individual who, during a taxable year, is entitled to a monthly benefit (except if in each month of his taxable year he was entitled only to a disability insurance benefit) is required to report to the Administration the total amount of his earnings (as defined in § 404.429) for each such taxable year under the following provisions.

(1) *Taxable years ending after 1967.* A report is required when the individual's total earnings or wages (as defined in § 404.429) for any taxable year ending after 1967 exceed the product of $140 multiplied by the number of months in his taxable year, except that the report is not required for a taxable year if:

(i) The individual attained the age of 72 in or before the first month of his entitlement to benefits in his taxable year, or

(ii) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which he was entitled to benefits and was under age 72.

(2) *Taxable years ending after 1965 through taxable years ending before 1968.* A report is required when the individual's total earnings or wages (as defined in § 404.429) for any taxable year ending after 1965 and before 1968 exceed the product of $125 multiplied by the number of months in his taxable year, except that the report is not required for a taxable year if:

(i) The individual attained the age of 72 in or before the first month of his entitlement to benefits in his taxable year, or

(ii) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which he was entitled to benefits and was under age 72.

(3) *Taxable years beginning after 1954 and ending before 1966.* For taxable years beginning after 1954 and ending before 1966, a report is required when an individual's total earnings or wages (as defined in § 404.429) for a taxable year exceed the product of $100 multiplied by the number of months in the taxable year, except that a report is not required if:

(i) The individual attained the age of 72 in or before the first month of his entitlement to benefits in his taxable year, or

(ii) For taxable years beginning after August 1958, the individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which he was entitled to benefits and was under age 72.

* * * * *

(f) *Extension of time for filing report.*—(1) *General.* Notwithstanding the provision described in paragraph (b) of this section, the Administration may grant a reasonable extension of time for making the report of earnings required under this section if it finds that there is valid reason for a delay, but in no case may the period be extended more than 3 months for any taxable year.

(2) *Requirements applicable to requests for extensions.* Before his annual report of earnings is due, a beneficiary may request an extension of time for filing his report. The request must meet all of these requirements:

(i) Be in writing, and

(ii) Be made by the beneficiary, his representative payee, or his authorized agent,

(iii) Be made before the required report is overdue (If an extension of time already has been granted, a request for further extension must be made before the due date as extended previously.),

(iv) Be made to an office of the Administration,

(v) Name the beneficiary for whom the annual report must be made and furnish his claim number,

(vi) Identify the year for which an annual report is due and for which an extension of time is requested,

(vii) Explain in the requester's own words the reasons why an extension of time is needed, and how much extended time is needed,

(viii) Show the date the request is made, and

(ix) Be signed by the requester.

(3) *Valid reason defined.* A valid reason is a bona fide need, problem, or situation which makes it impossible or difficult for a beneficiary (or his representative payee) to meet the annual report due date prescribed by law. This may be illness or disability of the one required to make the report, absence or travel so far from home that he does not have and cannot readily obtain the records needed for making his report, inability to obtain evidence required from another source when such evidence is necessary in making the report, inability of his accountant to compile the data needed for the annual report, or any similar situation which has a direct bearing on the individual's ability to comply with his reporting obligation within the specified time limit.

(4) *Evidence that extension of time has been granted.* In the absence of written evidence of a properly approved extension of time for making an annual report of earnings, it will be presumed that no extension of filing time was granted. In such case it will be necessary for the beneficiary to establish whether he otherwise had good cause (§ 404.454) for filing his annual report after the normal due date.

17. Subparagraph (1) of paragraph (b) of § 404.453 is revised to read as follows:

§ 404.453 Penalty deductions for failure to report earnings timely.

* * * * *

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report earnings for a taxable year within the prescribed time is determined as follows:

(1) *First failure to file timely report.* The penalty deduction for the first failure to file a timely report is an amount equal to the individual's benefit or benefits for the last month for which he was entitled to such benefit or benefits during the taxable year, except that with respect to any deductions imposed on or after January 2, 1968, if the amount of the deduction imposed for the taxable year is less than the benefit or benefits for the last month of the taxable year for which he was entitled to a benefit under section 202 of the Act, the penalty

deduction is an amount equal to the amount of the deduction imposed but not less than $10.

* * * * *

18. Paragraph (i) is added to § 404.906 to read as follows:

§ 404.906 Administrative actions which are not initial determinations.

Administrative actions which shall not be considered initial determinations under any provision of the regulations in this Subpart J, but which may receive administrative review, include, but are not limited to, the following:

* * * * *

(i) The decision on a request for an extension of time to file a report of earnings (see § 404.452).

[FR Doc.71-18679 Filed 12-21-71;8:51 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGFR 71-162]

ST. JOHNS RIVER, FLA.

Proposed Anchorage Grounds

The Coast Guard is considering revoking the regulations which established Anchorage A and B on the St. Johns River, Fla., as described in 33 CFR 110.183(a) (1) and (2). These anchorage grounds are no longer used by maritime interests and the area is currently being used as a spoil area by the U.S. Army Corps of Engineers.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Seventh Coast Guard District, Room 1018, Federal Building, 51 Southwest First Avenue, Miami, FL 33130. Each person submitting comments should include his name and address, identify this notice (CGFR 71-162), and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before January 31, 1972, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on this proposal. The proposal may be changed in light of comments received.

(Sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1)(A), 80 Stat. 937; 33 U.S.C. 471, 49 U.S.C. 1655(g)(1)(a); 49 CFR 1.46(c)(1), 33 CFR 1.05-1(c)(1) (36 F.R. 19160))

Dated: December 17, 1971.

J. M. AUSTIN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine, Environment and Systems.

[FR Doc.71-18695 Filed 12-21-71;8:48 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19378; FCC 71-1264]

FM BROADCAST STATIONS

Table of Assignments, Fresno, Hanford, and Fowler, Calif.

In the matter of amendment of § 73.202, *Table of Assignments, FM Broadcast Stations.* (Fresno, Hanford, and Fowler, Calif.), Docket No. 19378, RM-1879.

1. Notice of proposed rule making is hereby given concerning the amendment of § 73.202(b) of the rules, the Table of FM Assignments, on a petition filed by Capital Cities Broadcasting Corp., licensee of Station KFSN-TV, Stereo Broadcasting Corp., licensee of Station KFYE-FM, Channel 229, Radio KYNO, Inc., licensee of Station KYNO-FM, Channel 238, and Universal Broadcasting Co., licensee of Station KFIG(FM), Channel 233. The joint petitioners request a change in the assignment of Channel 233 to Channel 266 at Fresno, Calif. The above change could be achieved if the assignment at Hanford, Calif., were to be changed from Channel 266 to Channel 233. It appears that the simultaneous operation of the three FM stations licensed to the petitioners results in interference to the service of Station KFYE-FM in the downtown areas of Fresno. Stations KYNO-FM and KFIG(FM) are operating from sites in the downtown area, while Station KFYE-FM is operating from a site located approximately 30 miles northeast of Fresno. The interference is apparently caused by spurious responses as a result of interaction of the three signals within the FM receivers.

2. We believe it would be in the public interest to institute a rule making to change the assignment of FM channel at Fresno, Calif., in order that early resolution of the interference caused by such spurious responses in the FM receivers would be obtained. However, we note that, although Channel 233 could be assigned to Hanford, it would foreclose any attempt to relocate the FM station on Channel 235, presently assigned to Tulare, Calif., and operating from a site 30 miles east of Tulare, by moving closer or into Tulare. The distance between Hanford and Tulare is approximately 18 miles. Since the FM assignments in this area of the state are not overly concentrated, a substitute channel could be assigned to Tulare which would provide for flexibility in the Table of Assignments. Thus we will propose to assign Channel 290 for Channel 266 presently assigned to Hanford and unoccupied. Channel 290 may be assigned to Hanford without affecting any other assignments.

3. It is further noted that Channel 279 at Hanford, as presently assigned, is in violation of the minimum mileage separation requirements because of an assignment of Channel 280A, which is unoccupied, at Fowler, Calif., approximately 20 miles north. However, this can be remedied by changing the assignment at Fowler to Channel 244A, which can be assigned there without requiring a change in other assignments. Thus, we will on our own motion propose to make this change in the assignment at Fowler.

4. Showings required. Comments are invited upon the proposals discussed above. Proponents are expected to file comments, even if nothing more than to resubmit or refer to the petitions, and to answer whatever questions have been raised. Among other things, petitioners are expected to state their intention to apply for any channel requested, if assigned, and, if authorized, to make the required changes in the station promptly. Failure to make these showings may result in denial of the petitions.

5. Cutoff procedure. As in other FM rule making proceedings, the following procedures will govern:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered, if advanced in reply comments.

(b) With respect to petitions for rule making which conflict with any of the proposals in this notice, they will be considered as comments in the proceeding, and public notice to this effect will be given, as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision herein.

6. In view of the foregoing, and pursuant to authority found in section 4(i), 303(g) and (5), and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the Table of FM Assignments, § 73.202(b) of the Commission's rules and regulations, as concerns the communities below:

City	Channel No.	
	Present	Proposed
Fowler, Calif.	280A	244A
	220, 233, 238	220, 238, 250
Fresno, Calif.	250, 270, 274	266, 270, 274
Hanford, Calif.	266, 270	270, 290

7. It is further proposed, if the assignments above which involve a change in the channel of an existing station is concluded to be in the public interest and is adopted, to order, pursuant to section 316 of the Communications Act of 1934, as amended, the following licensee to

show cause why the license of its station should not be modified to specify the new channel instead of its present channels, as indicated below:

Station and location	Licensee	Present channel	Proposed channel
KFIG(FM), Fresno, Calif.	Universal Broadcasting Co.	233	266

8. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before January 28, 1972, and reply comments on or before February 11, 1972. All submissions by parties to this proceeding or persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

9. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. These documents will be available for public inspection during regular business hours in the Commission's Broadcast and Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

Adopted: December 15, 1971.

Released: December 16, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-18677 Filed 12-21-71;8:47 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1056, 1322]

[Ex Parte No. MC-19 (Sub-No. 16)]

MOVERS' & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.

Proposed Credit Card Systems for Collecting Transportation Charges

DECEMBER 17, 1971.

To resolve certain questions that have arisen with respect to informal and conditional approval given by this Commission to a carrier's proposal to utilize, on an experimental basis, credit card systems of certain shippers in collecting transportation charges.

Petitioner: Movers' & Warehousemen's Association of America, Inc. Petitioner's representative: Zelby & Burstein, 30 Church Street, New York, NY 10007.

By petition filed November 9, 1971, the above-named petitioner requests the Commission to institute a rule making proceeding for the purpose of determining (1) the necessity for a motor common carrier of household goods to obtain approval from this Commission prior to allowing shippers to make use of their credit card systems when making payment for transportation services; (2) the lawfulness under the Administrative Procedure Act, as well as the propriety, of this Commission's giving informal approval to temporary or territorially limited experimental plans in which certificated motor common carriers of household goods propose to arrange for the collection of applicable tariff charges by utilizing credit card systems of shippers; (3) whether this Commission's regulations, particularly those set forth in 49 CFR 1056.8 (estimates of charges) and 1322 (extension of credit to shippers by motor carriers), require revision in order to authorize or facilitate the practice of carriers utilizing credit card systems for the collection of their tariff charges; (4) whether limited use of credit card systems may constitute a discriminatory practice and unduly affect shippers of household goods or create competitive advantages or disadvantages among carriers of household goods; and (5) whether the Commission's jurisdiction allows, and the situation found to exist in the moving industry with respect to these matters warrants or requires, the prescription of lawful rules and regulations of general applicability to all motor common carriers of household goods in order to sanction a method or manner in which credit card systems of shippers of household goods may be put to use.

No oral hearing is contemplated at this time, but anyone wishing to make representations in favor of, or against the above-proposed institution of a rule-making proceeding, may do so by the submission of written data, views, or arguments. An original and 15 copies of such data, views, or arguments shall be filed with the Commission on or before February 7, 1972. A copy of each such statement should be served upon petitioner's representative. Written material or suggestions submitted will be available for public inspection at the Offices of the Interstate Commerce Commission, 12th and Constitution, Washington, DC, during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18703 Filed 12-21-71;8:51 am]

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

[32A CFR Ch. X]

[Oil Import Reg. 1 (Rev. 5)]

CANADIAN IMPORTS—DISTRICTS I–IV

Notice of Proposed Rule Making

It is proposed to provide allocations of Canadian imports into Districts I–IV by adding to Oil Import Regulation 1 (Revision 5) a new section 29, reading as set forth below. The proposed system of allocations is similar to that provided for in section 23 for the current allocating period.

Paragraph (d) would provide that the 1971 Canadian import base, to which a 2-year growth factor of 1.075 would be applied, would not include Canadian imports which a person imported in lieu of "offshore" imports or Canadian imports which a person was privileged to import during the period January 1, 1971, through December 31, 1971 pursuant to a decision of the Oil Import Appeals Board.

Final action on the proposal is subject to the concurrence of the Director, Office of Emergency Preparedness.

Interested persons are invited to submit written comments on this proposed amendment within ten (10) days after publication of this notice in the FEDERAL REGISTER to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240.

Each person who submits comments is asked to submit fifteen (15) copies.

GENE P. MORRELL,
Director,
Office of Oil and Gas.

DECEMBER 21, 1971.

Sec. 29 Canadian Imports—Districts I–IV—1972.

(a) As used in this section, the term "Canadian imports" means imports from Canada of crude oil which has been produced in Canada and unfinished oils which have been derived from crude oil or natural gas produced in Canada and which have been transported into the United States by overland means or over waterways other than ocean waterways.

(b) To be eligible for an allocation of imports under paragraph (d) or (e) of this section, a person must have in Districts I–IV a facility capable of processing Canadian imports.

(c) The Director shall, in accordance with the provisions of paragraphs (d) and (e) of this section, make allocations for the allocation period January 1, 1972, through December 31, 1972, of not to exceed 540,000 average barrels daily of Canadian imports into Districts I–IV. Licenses issued under such allocations shall permit the entry or withdrawal from warehouse for consumption of Canadian imports only.

(d) (1) The Director shall first make allocations of Canadian imports to eligible applicants who received allocations of such imports for the period January 1, 1971, through December 31, 1971, from the Administrator, Oil Import Administration, under paragraph (d) or paragraph (e) of section 23 of this regulation. Each such applicant shall be entitled to an allocation of Canadian imports equal to 1.075 times the total of the allocations of such imports, expressed in barrels (less the amount of such allocations relinquished to the Administrator), which he received from the Administrator, Oil Import Administration, for the period January 1, 1971,

[1] Commissioner Johnson absent.

through December 31, 1971, under paragraphs (d) and (p) or paragraphs (e) and (p) of section 23. No Canadian imports for which a license was issued by the Administrator, Oil Imports Administration, pursuant to paragraph (m) of section 29 as added by amendments 21 and 25 (35 F.R. 10296, 18258) or for which a license was issued by the Administrator pursuant to the provisions of paragraph (m) of section 23 or which a person was privileged to import during the period January 1, 1971, through December 31, 1971, pursuant to a decision of the Oil Import Appeals Board shall be regarded as constituting a part of, or as having been imported pursuant to, an allocation made under paragraphs (d), (e), or (p) of section 23.

(2) If an applicant entitled to an allocation under subparagraph (1) of this paragraph would receive a larger allocation under paragraph (e) of this section, he shall be given the larger allocation, unless the applicant elects to receive an allocation under this paragraph (d).

(e) (1) Each eligible applicant shall be entitled to an allocation of Canadian imports equal to the total of the facility suballocations made to such person for each facility listed by the applicant in his application. The Director shall make a facility suballocation for a particular facility according to the following formula:

$$\frac{\text{Eligible applicant's qualified inputs to a particular facility}}{\text{Total qualified inputs to all facilities listed in applications of all eligible applicants}} \times \text{Quantity of Canadian imports not allocated under paragraph (d).}$$

As used in the formula, "qualified inputs" means refinery inputs to refinery capacity, and petrochemical plant inputs to facilities other than refinery capacity, made during the 12-month period ending September 30, 1971.

(2) With respect to new or reactivated refinery capacity or petrochemical plants in Districts I–IV, the Director may make suballocations in accordance with, and subject to, the provisions of section 25 of this regulation, except that the facility suballocations shall be computed according to the formula set forth in subparagraph (1) of this paragraph (e). Subparagraphs (3) and (4) of paragraph (b) of section 25 shall have no application with respect to inputs estimated for the purposes of a facility suballocation. Paragraph (d) of section 25 shall be applicable only with respect to future allocations of Canadian imports.

(3) A person who receives an allocation under this paragraph (e) shall not receive an allocation under paragraph (d) of this section.

(f) A person receiving an allocation under paragraph (d) of this section must process in his facilities a quantity of Canadian imports equal to at least 50 percent of that allocation. A person receiving an allocation under paragraph (e) of this section must process in each facility for which a facility suballocation is made a quantity of Canadian imports equal to at least 50 percent of that facility suballocation. For the purposes of this paragraph, blending by mechanical means does not constitute processing.

(g) If a person who receives an allocation of Canadian imports under this section fails to import the total quantity of imports specified in the allocation, or if he fails to process all such imports (and domestic oil received in exchange for such imports) in his facilities before March 1, 1973, or if he fails to meet the requirement of paragraph (f) of this section, then any allocation of Canadian imports, or any allocation for Districts I–IV to which such person may otherwise be entitled under section 9, 10, or 25 of this regulation, for the first allocation period beginning after January 1, 1973, shall be reduced by the Director by the amount of Canadian imports which such person has failed to import, or by the amount of Canadian imports and exchanged oil which such person has failed to process in his facilities before March 1, 1973, or by the amount of Canadian imports by which he failed to meet the requirements of paragraph (f) of this section, except that the Director need not make such a reduction to the extent that (1) such person demonstrates to the satisfaction of the Director that such failures were without such person's fault and were beyond his control, or (2) such person, in writing, relinquishes all or part of an allocation made under this section and returns to the Director, on or before May 1, 1972, licenses issued thereunder.

(h) A person to whom an allocation is made by the Director under this section shall report and certify in writing to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240, not later than March 15, 1972, (1) the total quantity of Canadian imports which that person imported during the period January 1, 1971 through December 31, 1971, pursuant to an allocation made under section 23 of this regulation, and (2) the quantity of such imports that were processed in his facilities before March 1, 1972. The amount so reported and certified shall be subject to verification by the Director. If a person to whom an allocation is made under this section fails to file by March 15, 1972, the written report and certification required by this paragraph, the Director shall suspend all licenses issued under an allocation made under this section until the written report and certification are received.

(i) An allocation made pursuant to this section shall not be sold, assigned, or otherwise transferred. Each person who imports Canadian imports under an allocation made pursuant to this section shall process such imports (or oil received in an exchange) only in the facilities set forth in his application.

(j) A person who imports Canadian imports under an allocation made pursuant to this section may exchange not to exceed 50 percent of such imports for domestic crude oil or domestic unfinished oils. A proposed agreement for each such exchange must be reported to the Director before any action involved in the exchange is taken. Each such exchange must be effected on a ratio of not less than one barrel of domestic oil for each barrel of Canadian imports.

(k) If a person holds an allocation of Canadian imports under this section and if he also holds an allocation of imports under section 9, 10, or 25 for the allocation period January 1, 1972 through December 31, 1972, he may obtain from the Director a license which will permit him to import Canadian imports in a quantity not exceeding the total amount of his allocation made under section 9, 10, or 25. Such a license shall be charged against, and imports under such a license shall be deemed to have been made pursuant to, the allocation made under section 9, 10, or 25.

(l) Under the provisions of section 1A of Proclamation 3279, as amended, "entries for consumption of crude oil or unfinished oils transported by pipeline may be made until midnight January 15, 1973, under any license authorizing such imports from Canada" into Districts I–IV for the period January 1, 1972, through December 31, 1972.

(m) An application for an allocation under this section shall be made by letter or telegram to the Director, Office of Oil and Gas, Department of the Interior, Washington, D.C. 20240. Applications must be received by the Director within seven (7) days after the publication of this section 29 in the FEDERAL REGISTER. An application must contain the following information, which shall be certified by an officer of the applicant:

(1) The nature of each of the applicant's facilities in which Canadian imports will be processed.

(2) The location of each such facility.

(3) The total barrels of qualified inputs (as defined in subparagraph (1) of paragraph (e) of this section) for each such facility during the year ending September 30, 1971.

An officer of an applicant shall also certify in his application that, if an allocation of Canadian imports is made to the applicant under this section, the applicant will process all such imports (and all oil exchanged for such imports) in such facilities before March 1, 1973.

[FR Doc.71-18836 Filed 12-21-71;11:28 am]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

RAILWAY TRACK MAINTENANCE EQUIPMENT FROM AUSTRIA

Withholding of Appraisement Notice

DECEMBER 17, 1971.

Information was received on November 20, 1970, that railway track maintenance equipment from Austria was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice" which was published in the FEDERAL REGISTER of March 18, 1971, on page 5251. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the exporter's sales price (section 204 of the Act; 19 U.S.C. 163) of railway track maintenance equipment from Austria is less, or likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

STATEMENT OF REASONS

Information currently before the Bureau tends to indicate that there are no sales in the home market. As a result, third country sales will probably be used. The probable basis of comparison will be between exporter's sales price and third country prices of such or similar merchandise.

Exporter's sales price will probably be calculated by deducting from resale prices of the related United States firm to unrelated purchasers in the United States any discounts to arrive at a net selling price. From this net selling price, deductions will probably be made for the following: U.S. selling expenses, U.S. inland freight and handling charges, U.S. duty, ocean freight, marine insurance, and foreign inland freight and handling charges. An addition will probably be made for rebated Austrian sales taxes.

Third country prices will probably be based on terms of sale to a particular third country less, where appropriate, the following items: discounts, inland freight, f.o.b. charges, ocean freight, sales commission, and selling expenses. An addition will probably be made for rebated Austrian sales taxes. It appears that appropriate adjustments will also be made for differences in the merchandise.

Using the above criteria, there are reasonable grounds to believe or suspect that exporter's sales price will be lower than third country prices.

Customs officers are being directed to withhold appraisement of railway track maintenance equipment from Austria in accordance with § 153.48, Customs regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20226, in time to be received by his office not later than 10 calendar days from the date of publication of this notice in the FEDERAL REGISTER.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to § 153.34(b), Customs regulations, shall become effective upon publication in the FEDERAL REGISTER (12-22-71). It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved:

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-18730 Filed 12-21-71;8:51 am]

Internal Revenue Service

[Cost of Living Council Ruling 1971-1]

SALE OR LEASE OF CROP ALLOTMENTS

Cost of Living Council Ruling

Facts. Recent legislation allows marketing quotas or allotments for certain commodities to be transferred without concurrently transferring the land to which the quotas or allotments originally applied. Farmer X wants to sell or lease his crop allotment for cotton to Farmer Y but not include his land.

Issue. Noting that a sale or rental of farm land is generally exempt from control (regulations § 101.32(g)), would a sale or lease of the crop allotment or marketing quota also be exempt?

Ruling. Over the past 38 years, numerous laws and amendments thereto have been enacted to establish and revise mechanisms for the control of agricultural production. Much of this legislation is contained in chapters 26, 34, 35, and 35A of title 7 of the United States Code. It authorizes the establishment of marketing quotas and allotments for certain specific agricultural commodities. Marketing quotas are rights to sell specified quantities of a crop without incurring a penalty, and allotments are rights to receive certain agricultural payments from the Government if specific conditions are met. These allotments and marketing quotas have been recognized over the years as having a marked effect on the sale or rental value of a farm, and have been capitalized into the value thereof.

Ordinarily, allotments and marketing quotas run with the land and are sold or leased along with the land for which they were issued. In such cases, even though the allotment or marketing quota will be the basis for a substantial part of the consideration for a sale or lease, there is no practicable way to separate the value of these rights from the value of the land. Such transactions, which involve by far the majority of the cases, would be exempt from economic control under § 101.32(g) of the regulations.

In recent years, legislation has also been enacted which permits the sale or lease under specific conditions of marketing quotas or allotments for cotton, peanuts, and some types of tobacco, even though the land to which such marketing quotas or allotments were originally assigned is not being leased or sold at the same time. Such legislation appears in 7 U.S.C. 1344(b); 7 U.S.C. 1358; and 7 U.S.C. 1314. This legislation recognizes the particular relationship between the land and these rights and provides that no sale will be made from a farm which is subject to a mortgage or other lien without the concurrence of all persons having a lien on the land.

Under a literal reading of the price regulations (§ 300.11) a sale of these interests without the land would be a sale of personal property and thus governed by the rule that the price for these interests will not exceed that charged for similar rights in a substantial number of arm's-length transactions during the base period. Despite this, however, we hold that a sale or rental of these interests with or without the land is exempt from economic controls under § 101.32(g) for the following reasons: (1) The transfer of allotments is a rather limited activity, effecting small numbers of people and farms, overall. Transfer prices are likely to have no measurable effect on the national economy. (2) The true value of the allotments and marketing quotas varies from year to year with the market price of the commodity and the size of announced Government payments, neither

of which are subject to price ceilings. To attempt to require some farmers to transfer allotments to other farmers at less than true value would result in a windfall to the transferee at the expense of the transferor, with no measurable overall effect on the economy. (3) The legislative purpose of permitting certain quotas and allotments to move from less efficient to to more efficient farms under specific conditions would be frustrated.

K. MARTIN WORTHY,
Chief Counsel,
Internal Revenue Service.

Approved:

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.71-18793 Filed 12-21-71;9:14 am]

[Price Commission Ruling 1971-5]

CORPORATE FISCAL YEAR ACCOUNTING

Price Commission Ruling

Facts. For the purposes of filing income tax returns, preparing financial statements, and its general business operations, Corporation X maintains its books and records according to a fiscal year ended December 31st. On November 14, 1971, Phase II of the economic stabilization program, established pursuant to the Economic Stabilization Act of 1970, became operative.

Issue. Whether or not Corporation X must change from a fiscal year ended December 31st to a fiscal year ended November 13th.

Ruling. Corporation X may continue to maintain its books and records on the basis of a fiscal year ended December 31st. Although November 14, 1971 is a reference date or starting point which may be determinative of whether certain requirements may be operative with respect to the granting and implementation of certain price adjustments, there is no mandate in the Act or the regulations that the fiscal year of Corporation X be changed to end on November 13th. Moreover, this same rule would apply regardless of what date the fiscal year of Corporation X ended upon. Further, it is to be noted that the "fiscal year" referred to in this ruling is intended to mean a period of 12 months.

This ruling has been approved by the General Counsel of the Price Commission.

Dated: December 16, 1971.

K. MARTIN WORTHY,
Chief Counsel,
Internal Revenue Service.

Approved:

SAMUEL R. PIERCE, Jr.,
General Counsel,
Department of the Treasury.

[FR Doc.71-18792 Filed 12-21-71;9:14 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

DECEMBER 10, 1971.

Notice of a U.S. Department of Agriculture application, S 4106, for withdrawal and reservation of land for recreational purposes was published in the F.R. Doc. 70-17581 appearing on pages 20015 and 20016 of the issue for December 31, 1970. The Forest Service has cancelled its application in its entirety, affecting the following described lands:

HUMBOLDT MERIDIAN

KLAMATH NATIONAL FOREST

Nordheimer Flat Campground Site

T. 10 N., R. 7 E.,
Sec. 3, a portion of lot 2.
T. 11 N., R. 7 E.,
Sec. 34, a portion of SW¼SE¼.

The areas identified contain approximately 11.4 acres in Siskiyou County more particularly described by metes and bounds as follows:

Beginning at a point known as U.S. Bench Mark designated as Q241-1935, said bench mark lying N. 36° E., a distance of 320 feet from corner No. 1 which is the true point of beginning; thence N. 65°30' E., a distance of 662 feet to corner No. 2; thence N. 6° W., a distance of 575 feet to corner No. 3; thence S. 68°30' W., a distance of 1,094 feet to corner No. 4; thence S. 47° E., a distance of 646 feet to corner No. 1, the true point of beginning.

Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b), such lands at 10 a.m., on January 19, 1972, will be relieved of the segregative effect of the above-mentioned application.

JESSE H. JOHNSON,
Acting Chief, Branch of
Lands and Minerals Operations.

[FR Doc.71-18636 Filed 12-21-71;8:45 am]

COLORADO

Notice of Termination of Proposed Withdrawal and Reservation of Lands

DECEMBER 14, 1971.

Notice of a Bureau of Reclamation, U.S. Department of the Interior application, Colorado 0102703, for withdrawal and reservation of lands for reclamation purposes in connection with the Fryingpan-Arkansas Project, was published as F.R. Doc. No. 71-14710, on page 19518 of the issue for Thursday, October 7, 1971. The applicant agency has canceled its application insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN, COLO.

T. 12 S., R. 79 W.,
Sec 5, That portion of the W½ invaded by patented M.S. 117 under Patent No 3104;
Sec. 6, That portion invaded by patented M.S. 1655 under Patent No. 7142, patented M.S. 16592 under Patent No. 39736, patented M.S. 56 under Patent No. 1086, and patented M.S. 117 under Patent No. 3104;
Sec. 8, W½NE¼; and that portion of the E½NE¼ invaded by patented M.S. 359 under Patent No. 4581;
Sec. 9, That portion of the W½W½ invaded by patented M.S. 62 under Patent No. 1158, patented M.S. 359 under Patent No. 4581, and patented M.S. 16413 under Patent No. 39049.
T. 9 S., R. 80 W.,
Sec. 30, That portion of the NW¼NW¼ invaded by patented M.S. 4528 under Patent No. 16662, patented M.S. 20317 under Patent No. 1000202, and patented M.S. 1293 under Patent No. 11144.
T. 10 S., R. 80 W.,
Sec. 7, S½NW¼, NE¼SW¼.
T. 11 S., R. 80 W.,
Sec. 14, SW¼NW¼, NW¼SW¼, S½SW¼;
Sec. 15, lots 1, 2, 4, 5, and 6, N½NW¼;
Sec. 23, W½NE¼, S½SE¼NE¼, E½E½NW¼, N½SW¼, N½S½SW¼, N½N½SE¼;
Sec. 24, lots 2, 3, and 4, W½SW¼;
Sec. 25, lots 2, 3, 4, 5, 6, 7, and 8, S½N½SW¼, S½SW¼, S½N½SE¼, S½SE¼;
Sec. 26, lots 1, 2, S½NE¼NE¼, SE¼SE¼NW¼, S½SE¼;
Sec. 28, NW¼NW¼, W½SW¼NW¼;
Sec. 29, E½SE¼NE¼;
Sec. 36, N½NE¼, N½NW¼, S½NE¼SE¼.
T. 9 S., R. 81 W.,
Sec. 25, E½SE¼;
Sec. 36, That portion of the E½, and the NE¼NW¼ invaded by patented M.S. 2082 under Patent No. 21589, patented M.S. 2358 under Patent No. 9474, patented M.S. 4752 under Patent No. 22036; and that portion of the E½, and NE¼NW¼ withdrawn by Executive order dated April 16, 1889, as amended by Executive order dated January 31, 1903 which reserved and set apart certain lands described by metes and bounds for the use of the United States Commission of Fish and Fisheries (now the Bureau of Sport Fisheries and Wildlife).
T. 11 S., R. 81 W.,
Sec. 24, SE¼NE¼;
Sec. 25, That portion of the W½NW¼ and NW¼SW¼ invaded by patented M.S. 7926 under Patent No. 24474, patented M.S. 11443 under Patent No. 20090 and patented M.S. 16340 under Patent No. 40002;
Sec. 26, S½NE¼.

The above-described lands aggregate approximately 2,810.50 acres, which lands are all patented without any mineral reservations to the United States.

J. ELLIOTT HALL,
Chief,
Division of Technical Services.

[FR Doc.71-18655 Filed 12-21-71;8:46 am]

OUTER CONTINENTAL SHELF OFF LOUISIANA

Oil and Gas Lease Sale

Reference is hereby made to the notice of an oil and gas lease sale published in the FEDERAL REGISTER on November 20, 1971 (36 F.R. 22188). On December 20, 1971, the United States Court of Appeals

for the District of Columbia Circuit ordered in connection with said sale "that all bids shall be submitted as previously scheduled and all bids so submitted shall be impounded and kept sealed pending further order of this Court."

Pursuant to said court order, notice is hereby given that: (1) All bids submitted pursuant to said notice of sale shall be impounded and kept sealed pending further order of said court; (2) unless said court issues a further order allowing bids to be opened and accepted within 30 days from the date hereof, all bids shall be returned unopened to the bidders; and (3) all provisions of 43 CFR Part 3300 that are inconsistent with the provisions of this notice are hereby waived.

Dated: December 21, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.71-18825 Filed 12-21-71;10:48 am]

National Park Service

BLUE RIDGE PARKWAY

Notice of Intention To Issue a Concession Permit

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Blue Ridge Parkway, proposes to issue a concession permit to S. S. Clark, Jr., authorizing him to provide concession facilities and services for the public at Moses H. Cone Memorial Park on the Blue Ridge Parkway for a period of 2 years from January 1, 1972, through December 31, 1973.

The foregoing concessioner has performed his obligations under a prior permit to the satisfaction of the National Park Service and, therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. However, under the Act cited above, the National Park Service is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Superintendent, Blue Ridge Parkway, Post Office Box 1710, Roanoke, VA 24008 for information as to the requirements of the proposed permit.

Dated: December 1, 1971.

GRANVILLE B. LILES,
Superintendent,
Blue Ridge Parkway.

[FR Doc.71-18633 Filed 12-21-71;8:45 am]

Office of Hearings and Appeals

BURGESS MINING & CONSTRUCTION CORP.

Petition for Modification of Mandatory Safety Standard

DECEMBER 14, 1971.

In regard petition of Burgess Mining & Construction Corp. for modification of a mandatory safety standard, Docket No. M 72-15, 480 Dragline Pit, Boothton Strip Operations.

Notice is hereby given that Burgess Mining & Construction Corp. (petitioner) has filed a petition to modify the application of section 101(i) of the Act as implemented by § 77.206(c) prescribed by the Secretary, with respect to its 480 Dragline Pit—Boothton Strip Operations. Section 77.206(c) provides as follows:

Steep or vertical ladders which are used regularly at fixed locations shall be anchored securely and provided with backguards extending from a point not more than 7 feet from the bottom of the ladder to the top of the ladder.

Petitioner requests that the application of § 77.206(c) be modified to permit Burgess to operate mobile equipment without application of the standard to its operations. It is petitioner's position that installation of the ladders on mobile equipment will result in a diminution of safety for the person using the "ladder."

Parties interested in this petition shall file their answer or comments and, if they wish a hearing, their request for one, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director.

DECEMBER 14, 1971.

[FR Doc.71-18639 Filed 12-21-71;8:45 am]

BURGESS MINING & CONSTRUCTION CORP.

Petition for Modification of Mandatory Safety Standard

DECEMBER 14, 1971.

In regard petition of Burgess Mining & Construction Corp. for modification of a mandatory safety standard, Docket No. M 72-16, Boothton Strip Operations.

Notice is hereby given that Burgess Mining & Construction Corp. (petitioner) has filed a petition to modify the application of section 101(i) of the Act as implemented by §§ 77.1109(c)(1) and 77.1109(e)(1) prescribed by the Secretary, with respect to its Boothton Strip Operations. Sections 77.1109(c)(1) and 77.1109(e)(1) provide as follows:

(c)(1) Mobile equipment, including trucks, front-end loaders, bulldozers, portable welding units, and augers, shall be equipped with at least one portable fire extinguisher.

(e) Two portable fire extinguishers, or the equivalent, shall be provided at each of the following combustible liquid storage installations:

(1) Near each above ground or unburied combustible liquid storage station; and,

Petitioner requests that the application of §§ 77.1109(c)(1) and 77.1109(e)(1) be modified to permit Burgess to operate front-end loaders and bulldozers in addition to being permitted to maintain above-ground portable diesel fuel storage skid tanks within six hundred (600) feet of the required number of fire extinguishers. Also, that petitioner be allowed to operate pit haul trucks under certain conditions without fire extinguishers. It is petitioner's position that no diminution of safety to employees would result if the same coverage under § 77.1109(c)(1) of the regulations were extended to above-ground portable diesel fuel storage tanks; and, that no diminution of safety to employees would result if the same coverage under § 77.1109(c)(3) of the regulations were extended to front-end loaders and bulldozers.

Parties interested in this petition shall file their answer or comments and, if they wish a hearing, their request for one, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203. Copies of the petition are available for inspection at that address.

JAMES M. DAY,
Director.

DECEMBER 14, 1971.

[FR Doc.71-18640 Filed 12-21-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Notice of Referendum

Notice is hereby given that on January 10 to 14, 1972, each inclusive, a referendum will be held of farmers engaged in the production of the 1971 crop of Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended. It is hereby determined that the referendum will be held by mail ballot during the period specified above. Notice was given (36 F.R. 21208) that consideration would be given to data, views, and recommendations on establishing the date or period for holding the referendum and whether the referendum would be conducted at polling places rather than by mail ballot. No

data, views, or recommendations regarding the referendum were received pursuant to such notice. It is hereby determined that the referendum will be held by mail ballot during the period specified above. The purpose of the referendum is to determine whether the farmers voting favor a national marketing quota for each of the 1972–73, 1973–74, and 1974–75 marketing years for Cigar-filler and Binder (types 42, 43, 44, 53, 54, and 55) tobacco. The referendum will be conducted in accordance with the provisions of the Act and the Regulations Governing the Holding of Referenda on Marketing Quotas, as amended, Part 717 of this chapter (28 F.R. 13249).

Signed at Washington, D.C., on December 14, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71–18660 Filed 12–21–71;8:49 am]

FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Notice of Referendum

Notice is hereby given that on January 10 to 14, 1972, each inclusive, a referendum will be held of farmers engaged in the production of the 1971 crop of Cigar-binder (types 51 and 52) tobacco, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended. Notice was given (36 F.R. 21208) that consideration would be given to data, views, and recommendations on establishing the date or period for holding the referendum and whether the referendum would be conducted at polling places rather than by mail ballot. No data, views, or recommendations regarding the referendum were received pursuant to such notice. It is hereby determined that the referendum will be held by mail ballot during the period specified above. The purpose of the referendum is to determine whether the farmers voting favor a national marketing quota for each of the 1972–73, 1973–74, and 1974–75 marketing years for Cigar-binder (types 51 and 52) tobacco. The referendum will be conducted in accordance with the provisions of the Act and the Regulations Governing the Holding of Referenda on Marketing Quotas, as amended (28 F.R. 13249), Part 717 of this chapter.

Signed at Washington, D.C., on December 14, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71–18661 Filed 12–21–71;8:49 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

RETAILERS' INVENTORIES, SALES, PURCHASES, AND NUMBER OF ESTABLISHMENTS

Notice of Determination

In accordance with title 13, United States Code, sections 181, 224, and 225 and due notice of consideration having been published November 16, 1971 (36 F.R. 21836) I have determined that certain 1971 annual data for retail trade are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and are also applicable to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted each year since 1951, and makes available on a comparable classification basis data covering 1971 yearend inventories, annual sales and purchases, and number of retail stores operated at the end of the year. This survey is the only continuing source available on a comparable classification and timely basis for use as the benchmark for monthly inventory and purchases estimates. It also assists in establishing a benchmark for the geographic area distribution of sales. These data are not publicly available on a timely basis from nongovernmental or other governmental sources.

Reports will be required only from a selected sample of retail establishments in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above. Reports will be requested from sample stores based on their sales size, selection in Census list sample mail panel, and location in Census sample areas. A group of the largest firms, in terms of number of retail stores, will be requested to report their sales and number of stores by county; but those firms which are participating monthly in the Bureau's geographic area survey will be asked to report at the national level only.

Report forms will be furnished to the firms covered by the survey and will be due 15 days after receipts. Copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 17, 1971.

GEORGE H. BROWN,
Director, Bureau of the Census.

[FR Doc.71–18685 Filed 12–21–71;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

TATE AND LYLE, LTD.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2A2751) has been filed by Tate and Lyle, Ltd., Research Centre, Westerham Road, Keston, Kent, England BR2 6HJ, proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use of dimethyl diallyl ammonium chloride, where the alkyl groups (C_{16}–C_{19}) are derived from tallow, as a decolorizing agent in the manufacture of sugar.

Dated: December 10, 1971.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.71–18646 Filed 12–21–71;8:49 am]

AGREEMENT BETWEEN DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE AND ENVIRONMENTAL PROTECTION AGENCY

Notice Regarding Matters of Mutual Responsibility

The Department of Health, Education, and Welfare and the Environmental Protection Agency have drawn up an agreement regarding matters of mutual responsibility under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. It reads as follows:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

ENVIRONMENTAL PROTECTION AGENCY

MEMORANDUM OF AGREEMENT REGARDING MATTERS OF MUTUAL RESPONSIBILITY UNDER FEDERAL FOOD, DRUG, AND COSMETIC ACT AND FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Reorganization Plan No. 3 of 1970 published in the FEDERAL REGISTER of October 6, 1970, stated in section 2, paragraph (4) that the functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 348, were transferred to the Administrator of the Environmental Protection Agency effective December 2, 1970. After considering all of the various pesticide uses which have been subject to petition procedures under these three sections, and certain other economic poison uses subject both to the Federal Insecticide, Fungicide, and Rodenticide Act, 731 U.S.C. 35, and to the Federal Food, Drug, and Cosmetic Act, the Administrator of the Environmental Protection Agency and the Secretary of Health, Education, and Welfare have concluded that this agreement is needed to provide for the coordination of activities pertaining to economic poisons and to inform all concerned as to which agency

will process the pesticide petitions for each type of use.

Reorganization Plan No. 3 also transferred to the Administrator of the Environmental Protection Agency the functions of the Secretary of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act. There are certain products which are subject to the requirements of both the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, an Rodenticide Act (FIFRA). In the past, confusion, misunderstanding and inconvenience have resulted from procedures followed in connection with the proposed marketing of such products. The Administrator of the Environmental Protection Agency (EPA) and the Secretary of Health, Education, and Welfare are agreed that a new procedure should be followed, whereby the manufacturer would be informed (1) of the agency exercising primary jurisdiction regarding his product, (2) that the matter will be referred to the other agency for decision under the law of that agency, and (3) that approval for marketing the product will not be granted unless or until each agency has approved the marketing under its respective authority. This matter was the subject of a proposed statement of general policy and interpretation published in the FEDERAL REGISTER on August 5, 1970.

There are other procedures which should be established in order to facilitate the handling of matters which are of direct concern to both Agencies. These matters involve issuance of regulations under section 406 of the FFDCA, establishment of reference standards, exchange of information on certain programs, agreements with States and foreign countries on surveillance and enforcement activities on pesticide residues in food and publication of the Pesticide Analytical Manual.

The term "pesticide chemical" is defined in section 201(q) of the Federal Food, Drug, and Cosmetic Act as a substance which is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act and which is used in the production, storage, or transportation of raw agricultural commodities. Economic poisons used on food crops before or after harvest and on food animals are included in this category. Economic poisons used on or concentrating in processed foods are treated in the Federal Food, Drug, and Cosmetic Act as food additives rather than pesticide chemicals.

Both agencies agree that:

1. The following petitions will be processed by the Environmental Protection Agency:

a. Petitions requesting tolerances or exemption from tolerances for residues of pesticide chemicals on raw agricultural commodities.

b. Petitions for food additive regulations required for residues of pesticide chemicals carrying over and concentrating in processed foods manufactured from treated raw agricultural commodities.

c. Petitions for regulations for residues of economic poisons from direct treatment of processed foods with fumigants or insecticides.

d. Petitions for food additive regulations to permit the safe use of economic poisons to impregnate food-packaging materials such as wrappers or bags to protect raw agricultural commodities from any pest or to protect processed foods from insects.

2. The following petitions will be processed by FDA:

a. Petitions for food additive regulations to permit use of sanitizers on food-contact surfaces.

b. Petitions for food additive regulations to permit the safe use of economic poisons as preservatives in processed food.

c. Petitions for food additive regulations to permit the safe use of economic poisons in food packaging material when such use is not covered by 1.d.

3. Applications for approval of drugs under FFDCA and for registration of economic poisons under FIFRA will be processed as follows:

a. Whenever a product is submitted to either FDA or EPA for approval and it is believed by either agency that the product is subject to the requirements of both the FFDCA and the FIFRA, an interagency determination will be made and an agreement reached with respect to (1) whether the product is subject to the requirements of the FFDCA and FIFRA, (2) whether particular claims are "economic poison" or "drug" claims and (3) whether the representations made for the product, including the implications to be drawn therefrom, are primarily "economic poison" or "drug" representations.

b. Whenever application is made to EPA for registration of a product that is both a drug and an economic poison and determination has been made that the principal claims or representations relate to an economic poison, EPA will withhold registration of the product under FIFRA until it has been informed by FDA that the product complies with the provisions of the laws administered by FDA.

c. Whenever application is made to FDA for approval of a product that is both a drug and an economic poison and determination has been made that the principal claims or representations relate to a drug, FDA will not approve a new drug application, a new animal drug application, or an antibiotic application without first being advised by EPA that the claims or representations subject to the provisions of the FIFRA are warranted and that the product is eligible for registration under that act.

d. Whenever application is made to EPA for the registration of a product that is both a drug and an economic poison and determination has been made that the principal claims or representations relate to a drug, the matter will be referred by EPA to FDA and the matter will thereafter be handled as if the application had been originally made to FDA.

e. Whenever application is made to FDA for approval of a product that is both an economic poison and a drug and determination has been made that the principal claims or representations relate to an economic poison, the matter will be referred by FDA to EPA and the matter will thereafter be handled as if the application had been originally made to EPA.

f. Neither agency will approve the marketing of a product under the law administered by it if the product would not be in full compliance with the requirements of a law administered by the other.

4. If the poisonous or deleterious substance referred to in section 406 of the Federal Food, Drug, and Cosmetic Act is present in food primarily as a result of its use as a pesticide chemical, or an economic poison, any regulation establishing a tolerance for such substance in food will be promulgated by the Environmental Protection Agency. Any other regulations under section 406 will be promulgated by FDA.

5. EPA will have primary responsibility for maintenance of an analytical reference standards repository of pesticides for which tolerances are established. FDA will transfer to EPA those samples which have been prepared for this purpose. Upon request, portions of these samples will be made available to the FDA and local enforcement authorities as needed for use in official analysis.

6. Each agency will appoint an individual and alternates who shall be responsible for interagency cooperation and coordination.

a. These representatives, with staff support as desired, shall meet regularly on a mutually agreeable schedule to discuss program and policy coordination and to establish operating procedures between the agencies. Primary functions of the representatives are: (i) To assure adherence to the general provisions of paragraphs 1–4 above, inclusive; (ii) to promote mutual concurrence on chemical, toxicologic, and pharmacologic requirements for pesticide tolerances; (iii) to provide for complete and timely exchange of information concerning proposed tolerances, administrative guidelines, methodology, research programs, monitoring, surveillance and enforcement programs, and legal action; (iv) to provide that FDA will continue responsibility for agreements with States and foreign countries on surveillance and enforcement activities on pesticide residues in food; (v) to provide that where the official U.S. delegate to international organizations is either EPA or FDA this will not automatically preclude representation by the other agency; and (vi) to provide that publication of FDA's Pesticide Analytical Manual for residues in foods and other environmental substrates will be continued as a joint FDA–EPA sponsorship under editorial management consisting of representatives of both agencies.

b. Issues arising out of the above provisions which are not resolved after two regularly scheduled meetings shall be submitted through the organizational structure of each agency for resolution.

c. Agency representatives may propose additional agreements concerning these and other matters affecting interagency coordination and cooperation on the health aspects of pesticides and their residues in food and drugs. These proposals may be jointly approved by the Deputy Assistant Administrator for Pesticides Programs EPA, and the Commissioner of Food and Drugs, HEW.

For the Department of Health, Education, and Welfare.

J. G. VENEMAN,
Acting Secretary.

JUNE 17, 1971.

CHARLES C. EDWARDS,
Commissioner.

MAY 11, 1971.

For the Environmental Protection Agency.

WILLIAM D. RUCKELSHAUS,
Administrator.

SEPTEMBER 4, 1971.

Effective date. This agreement became effective on November 10, 1971.

Dated: December 9, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-18651 Filed 12-21-71;8:49 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Notice of Availability of Applicant's Environmental Report and Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the

Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that reports entitled "Applicant's Environmental Report—Operating Permit Stage," and "Supplement No. 1 to Environmental Report," for Arkansas Nuclear One, Unit 1, submitted by the Arkansas Power & Light Co. have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Arkansas River Valley Regional Library, Dardanelle, Ark. 72834. The report is also being made available to the public at the Arkansas Planning Commission, Room 300, Game and Fish Commission Building, Little Rock, Ark. 72201 and the West Central Arkansas Planning and Development District, Municipal Building, Box R, Hot Springs, Ark. 71901.

These reports discuss environmental considerations related to the proposed operation of Arkansas Nuclear One, Unit 1, located on the Dardanelle Reservoir on the Arkansas River in Pope County, Ark.

After the reports have been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft detailed statement. The summary notice will request comments from Federal agencies, State and local officials, and interested persons on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 13th day of December, 1971.

For the Atomic Energy Commission.

R. C. DEYOUNG,
Assistant Director for Pressurized Water Reactors, Division of Reactor Licensing.

[FR Doc.71-18654 Filed 12-21-71;8:51 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 23827, 23828; Order 71-12-68]

AIR WEST

Order Denying Temporary Suspension and Setting Application for Hearing

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of December 1971.

On September 14, 1971, Hughes Air Corp. (Air West), filed an application[1] to amend its certificate of public convenience and necessity for route 76 by deleting Roseburg, Oreg. Air West also filed an application[2] requesting authority to suspend service temporarily at Roseburg until the Board acts upon its application in Docket 23827.

In support of its application in Docket 23828, Air West alleges that, inter alia, Roseburg has not generated sufficient passenger traffic to warrant the continuation of air service;[3] continuation of service at Roseburg will produce an annual subsidy requirement of approximately $50,000; and there is adequate surface transportation available to other nearby airports.

Answers in opposition were filed by the city of Roseburg and the Public Utility Commissioner of Oregon, requesting denial of Air West's application to temporarily suspend service at Roseburg pending investigation and hearing on Air West's certificate amendment application in Docket 23827. The answering parties allege that, inter alia, suspension of Air West will terminate air service at Roseburg; the nearest airport is too distant to convenience the Roseburg community; and Air West has done little to promote its services at Roseburg.

On October 14, 1971, Air West filed a consolidated reply.

Upon consideration of the pleadings and all the relevant facts, we have decided to deny Air West's request for a temporary suspension of service and to set for hearing Air West's application to delete Roseburg.

We note that, in the absence of a replacement service, Roseburg will be without air service.[4] As indicated above, the community opposes Air West's suspension, and we believe that under all the circumstances it is appropriate to consider, on an evidentiary record, the contentions of the parties.

Accordingly, it is ordered, That:

1. The application of Hughes Air Corp. (Air West), Docket 23828, be and it hereby is denied;

2. The application of Air West, in Docket 23827, be and it hereby is set for hearing at a time and place to be hereafter designated; and

3. This order shall be served on the city of Roseburg; Airport Manager, Roseburg Airport; State of Oregon; Postmaster General; United Air Lines, Inc.; and Hughes Air Corp.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.71-18684 Filed 12-21-71;8:47 am]

[1] Docket 23827.

[2] Docket 23828.

[3] Air West alleges that in calendar year 1970, it averaged only 1.8 passengers per departure.

[4] As recently as 1966 the Board determined, after a full hearing, that certificated service should be retained at Roseburg. Coeur D'Alene/Roseburg Service Investigation, Order E-23756, May 31, 1966.

CIVIL SERVICE COMMISSION

NATIONAL LABOR RELATIONS BOARD

Notice of Revocation of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the National Labor Relations Board to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the General Counsel, Office of the General Counsel.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-18669 Filed 12-21-71;8:47 am]

RADIATION MONITORS, PORTSMOUTH NAVAL SHIPYARD, N.H.

Manpower Shortage, Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found on November 30, 1971, a manpower shortage for positions of Radiation Monitor A, WX-10 and Radiation Monitor B, WX-8, at the Portsmouth Naval Shipyard, Portsmouth, N.H.

Assuming other legal requirements are met, appointees to these positions may be paid for the expense of travel and transportation to first post of duty.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-18664 Filed 12-21-71;8:46 am]

ENVIRONMENTAL PROTECTION AGENCY

AGREEMENT BETWEEN DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE AND ENVIRONMENTAL PROTECTION AGENCY

Notice Regarding Matters of Mutual Responsibility

CROSS REFERENCE: For a document giving notice of agreement between the Department of Health, Education, and Welfare and the Environmental Protection Agency on matters of mutual responsibility under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act, see F.R. Doc. "Agreement between the Department of Health, Education, and Welfare and the Environmental Protection Agency on Matters of Mutual Responsibility" appearing at page 24234 of this issue of the FEDERAL REGISTER.

3,5-DICHLORO-N-(1,1-DIMETHYL-2-PROPYNYL)BENZAMIDE

Notice of Reextension of Temporary Tolerances

The Rohm and Haas Co., Independence Mall West, Philadelphia, Pa. 19105, was granted temporary tolerances for residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl) benzamide and its metabolites calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl) benzamide in or on the raw agricultural commodities alfalfa, clover, lespedeza, trefoil, and vetch at 3 parts per million; lettuce at 1 part per million; kidney and liver at 0.2 part per million (negligible residue); and milk at 0.01 part per million (negligible residue) on August 29, 1969 (notice was published in the FEDERAL REGISTER of September 9, 1969 (34 F.R. 14183)). At the request of the firm, the temporary tolerances were extended to August 29, 1971 (notice was published in the FEDERAL REGISTER of November 17, 1970 (35 F.R. 17678)).

Subsequently, the firm amended the petition by (a) withdrawing the proposed tolerance on lespedeza; (b) specifying that the temporary tolerance of 0.2 part per million for negligible residues in kidney and liver apply to cattle and poultry; and (c) proposing temporary tolerances for negligible residues of the herbicide in eggs, meat, fat, and meat byproducts (except kidney and liver) of poultry at 0.01 part per million.

The firm has requested an additional 1-year reextension to obtain additional experimental data. It is concluded that such reextension will protect the public health. A condition under which these temporary tolerances are reextended is that the herbicide will be used in accordance with the temporary permit which is being issued concurrently by the Environmental Protection Agency and which provides for distribution under the Rohm and Haas Co. name.

As reextended these temporary tolerances expire August 29, 1972.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038).

Dated: December 14, 1971.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-18683 Filed 12-21-71;8:51 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 71-1251]

BROADCASTING OF INFORMATION CONCERNING HORSE RACES

Declaratory Ruling

1. The Commission has under consideration requests for declaratory rulings, pursuant to 5 U.S.C. 554(d), and § 1.2 of the Commission's rules (47 CFR 1.2), filed by the city of New York Off-Track Betting Corp. (OTB). The ruling sought in each instance is that the Commission should not impose either administrative or other sanctions against television, radio, or cable systems if they broadcast (or cablecast) information about horse races and OTB. The thrust of the request is that the Commission now determine that the broadcast or cablecast of such information would not be in contravention of law, the Commission's rules or policies or otherwise contrary to the public interest.

2. OTB requested a ruling with respect to each of the following types of programs, singly or in combination:

(1) OTB produced replays of selected races that have been run at tracks in and/or out of New York State as to which OTB has accepted parimutuel wagers from city or State of New York bettors;

(2) OTB produced race information programs, which would include some or all of the following: The results of all races (in and/or out of State) as to which OTB has accepted parimutuel wagers from city or State of New York bettors; the parimutuel prices paid on all such races; scratches, posttime changes, weights, jockeys, odds, and track conditions as they concern future races (a ruling is requested for the transmission of such information as soon as it is available and for the transmission of such information on a delayed basis);

(3) OTB produced live showings of all or some of the races of the program at tracks in and/or out of New York State;

(4) News reports of some or all of the subjects described in (1) through (3) above;

(5) Advertisements of OTB, including the promotion of legal off-track parimutuel wagering and explanations as to how OTB's facilities may be utilized;

(6) Documentary programs on OTB, including such material as descriptions of how OTB operates and its proceeds are used, and how illegal gambling is operated and affects government and society.

Additionally, OTB requests declaratory rulings as to the following utilization of facilities under the Commission's jurisdiction:

(7) Transmission by wire communication or microwave of racing information from legally operated tracks in and/or out of New York State to OTB facilities;

(8) Dissemination, by mass announcement telephone devices (as used, for example, by the National Weather Service) located in the city of New York, of all types of information on racing programs as to which OTB has accepted or will accept wagers from city or State of New York bettors.

3. In 1964, following extended consideration, the Commission adopted a policy statement concerning the broadcasting of horseracing information.[1] The thrust and objective of that Policy Statement was the curtailment or the use of broadcast facilities to disseminate information which is or might well be of substantial use to illegal gambling. As examples of broadcasts which were of concern to the Commission, the following were cited:

(a) The broadcasting of a full program of races from a racetrack, simultaneously with their running.

(b) Broadcasting detailed changes in prerace information, such as post positions, jockeys, probable odds and scratches, prior to the race.

(c) Broadcasting of off times as soon as this information is available or shortly thereafter.

(d) Broadcasting race results and prices paid on a race before the next race has been run at the same track on the same day.

(e) Broadcasts of horserace information sponsored by publishers of "scratch sheets" or other publications disseminating detailed horseracing information by touts, or other persons whose activities may result in aiding illegal gambling or furnishing information to illegal gamblers or bookmakers.

The Commission stressed that its concern was primarily with those licensees which may regularly engage in the listed types of programing—and not where there are only isolated or sporadic instances of such broadcasts. Further we did not, nor did we intend to inhibit the broadcast of a race or races, or of full information about any races which are of widespread interest to the general public.

4. The objective of our 1964 Policy Statement—that broadcast facilities should not be used to disseminate information which is or might well be of substantial assistance to illegal gambling—remains a matter of continuing concern to the Commission and to the Federal Government. This concern with illegal gambling activities is also reflected in the establishment by President Nixon of the National Council on Organized Crime,[2] which is charged with the responsibility of formulating a nationwide approach to the elimination of organized crime and its report is due in the not too distant future. There is no basis therefore for any relaxation or limitation of

[1] Report and order, Docket No. 15040, 26 FCC 1571 (1964), revising previous Policy Statement, Public Notice, Nov. 22, 1961, FCC 61-1404.

[2] Executive Order 11534, 35 F.R. 111, June 9, 1970.

the strictures set forth in our 1964 Policy Statement at the present time.

5. The Commission recognized that betting on horseracing under the aegis of the Off-Track Betting Corp. of the city of New York has been authorized by State law and that it is petitioner's desire to use broadcast facilities in furtherance of legal activities. With that in view, we will address ourselves to the requests seriatim.

Request No. 1. The Commission ruling on this request will be encompassed with the ruling on the request in paragraph 6 of this document.

Request No. 2. The request is clearly inconsistent with the Commission's 1964 Policy Statement, and we rule against it for our licensees.

Request No. 3. The broadcasting of a full program of races from a racetrack, simultaneously with their running would be in conflict with our 1964 Policy Statement. However a modified grant of this request is contained in paragraph 6 of this ruling.

Request No. 4. Bona fide news stories that are not inconsistent with our 1964 Policy Statement are, of course, permissible.

Request No. 5. While OTB betting activities are legal in the State of New York, it would appear that the use of broadcast facilities to promote such legal activities would also serve to promote private and still illegal gambling in that State as well as promoting gambling activities in neighboring States where it is still illegal. The broadcast of such programs would therefore be contrary to our 1964 Policy Statement. The extent of allowable advertising would be limited to "institutional advertisements" i.e., in much the same manner as the racetracks currently advertise "come to XYZ race track".

Request No. 6. The use of documentary programs would not be outside the purview of the Commission's Policy Statement.

Request No. 7. Transmission by wire communication or microwave of racing information from legally operated tracks in and/or out of New York State to OTB facilities. See (8) below.

Request No. 8. Items (7) and (8) appear to come within the provisions of Title 18 U.S.C. § 1084(b), which makes the general prohibition against the transmission of wagering information inapplicable in certain situations. The legislative history makes clear that subsection (b) was enacted so as to exclude such activities in the State of Nevada from the general prohibition. Since the State of New York has legalized off-track horserace betting, the types of activities described in (7) and (8) would also come within subsection (b).

6. OTB in a supplementary request asked the Commission to rule upon two additional matters:

(a) A daily 30-minute early evening program which would include replays of some races run that day and the results and prices paid on races as to which OTB had accepted parimutuel wagers from city or State of New York bettors and (b) a daily 30-minute evening program of the same nature, but including live coverage of the final race run at a given track.

It is the Commission's view that the broadcast of such programs would not be inconsistent with our 1964 Policy Statement. In fact the broadcast of programs similar to these are not uncommon in various parts of the country.[3]

Adopted: December 15, 1971.

Released: December 17, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-18675 Filed 12-21-71;8:47 am]

[Dockets Nos. 19272, 19273; FCC 71R-364]

WVOC, INC., AND MICHIGAN BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In regard applications of WVOC, Inc., Battle Creek, Mich., Docket No. 19272, File No. BPH-7005; Michigan Broadcasting Co., Battle Creek, Mich., Docket No. 19273, File No. BPH-7045; for construction permits.

1. This proceeding involves the mutually exclusive applications of WVOC, Inc. (WVOC), and Michigan Broadcasting Co. (Michigan), each requesting a construction permit for a new Class A FM broadcast station at Battle Creek, Mich. The applications were designated for hearing by Commission Order, FCC 71-670, 36 F.R. 12642, published July 2, 1971. Presently before the Review Board is a petition to enlarge issues, filed July 19, 1971, by Michigan, which requests the addition of staff adequacy, equipment and technical facilities, engineering and financial issues against WVOC.[1]

STAFF ADEQUACY ISSUE

2. In its application, as originally filed, WVOC proposed a staff of six persons to effectuate a programing proposal of 128 hours per week with nearly complete duplication of the programing of daytime-only standard broadcast Station WVOC, Battle Creek, Mich.[2] Utilization of the studio facilities and news staff of Station WVOC, and the full-time participation of two principals, Don F. Price and D. Burdette Price as general manager and program director, respectively, was also indicated by the applicant. On March 30, 1971, WVOC amended its application to reflect 128 hours of independent FM programing each week and a staff of "six full time, one part time" employees.[3] Michigan contends that over 40 percent of WVOC's weekly FM broadcast schedule will be devoted to local programing with a special emphasis on religious programs[4] and that the proposed FM staff, allegedly comprised of the six full-time employees of Station WVOC and complemented by only one part-time employee, will not be adequate to implement the programing proposal of the proposed station and, at the same time, perform its normal duties for Station WVOC. In Michigan's view, the unrealistic staffing proposal of WVOC requires the addition of the requested issue.[5]

3. WVOC opposes petitioner's request, contending that its staffing arrangements are unambiguous and have been fully set forth in its application. While its intention to rely somewhat upon the news staff and news wire facilities of Station WVOC and the participation of the Prices, who discharge similar responsibilities with respect to the AM operation, was set forth in its application, WVOC points out that it never indicated that the six-man staff of Station WVOC will also operate the proposed FM facility. A separate staff of six full-time and one part-time employees is, in WVOC's opinion, sufficient to effectuate a programing proposal that is not "overly ambitious". In this connection, WVOC asserts that the major portion of the religion and religious music programs, which comprise 30 percent of its total weekly broadcast time (see note 4, supra) are entertainment offerings, whereas the remaining religious programs were included in the 5 hours of broadcast time (4.2

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[3] Commission action in this area is coordinated with the Department of Justice and this procedure has been followed with respect to this proceeding.

[4] Commissioner Johnson absent.

[1] Other related pleadings before the Board are: (a) Opposition, filed Aug. 2, 1971, by WVOC; (b) comments, filed Aug. 3, 1971, by the Broadcast Bureau; and (c) reply, filed Aug. 9, 1971, by Michigan. Supplemental certificates of service were also filed by Michigan on July 22, 1971, and Aug. 11, 1971.

[2] WVOC is the corporate licensee of Station WVOC (1500 kHz, 1 kw., DA), which operates with a staff of six employees for approximately 80 hours each week. Petitioner is also the licensee of a Battle Creek AM facility, Station WBCK, which operates on 930 kHz, 1 kw., 5 kw.-LS, DA-2, U.

[3] The applicant's first-year operating costs estimate was also increased from $12,000 to $18,000.

[4] The WVOC application reflects the following allocations of broadcast time: News (4.6 percent); public affairs (2.3 percent); and all other programs, exclusive of entertainment and sports (4.2 percent). In addition, WVOC proposes to devote 30 percent of its weekly air time to religion and religious music. By an amendment filed June 7, 1971, WVOC indicated its intention to actively seek out and broadcast religious programs produced by established representatives of the major faiths in the Battle Creek area.

[5] Noting that there is "some ambiguity" as to whether the six full-time employees proposed by WVOC to operate its FM station are also employees of Station WVOC, the Broadcast Bureau supports petitioner's request, in the absence of additional information regarding the duties and responsibilities of the proposed staff and the extent of the proposed station's local program originations.

percent of the weekly schedule) allocated to the "all other programs" category.[6]

4. The Review Board believes that the petitioner's allegations are insufficient to warrant the inclusion of the requested staff adequacy issue. Petitioner's allegations are premised upon its belief that the six full-time employees proposed to operate the FM station are the same full-time employees presently operating Station WVOC. However, neither the WVOC application as originally filed nor the applicant's March 30, 1971, amendment lend adequate support to petitioner's assertion. The applicant's staffing arrangements are clearly set forth in its amended application, and the Board is not persuaded that they do not correctly represent WVOC's intentions. See KLRA, Inc., 7 FCC 2d 458, 9 RR 2d 933 (1967). The WVOC programing proposal does not appear to involve any unusual program plans which might affect the proposed staff's ability to implement the proposal (compare Regal Broadcasting Corporation (WHRL–FM), FCC 68R–386, 14 RR 2d 287, released September 19, 1968);[7] and petitioner's contentions in this regard, which are based upon its mistaken beliefs concerning the six full-time FM employees and the amount of broadcast time to be devoted by WVOC to religious programing, are both speculative and generalized and lack the supporting documentation required by § 1.229(c) to justify the addition of an issue. See Martin Lake Broadcasting Company, 23 FCC 2d 721, 19 RR 2d 277 (1970); Fred Kaysbier, 19 FCC 2d 636, 17 RR 2d 389 (1969); and Community Broadcasters, Inc., 10 FCC 2d 48, 11 RR 2d 223 (1967).

EQUIPMENT AND TECHNICAL FACILITIES ISSUE

5. Michigan seeks the addition of an issue to determine whether the equipment and technical facilities proposed by WVOC are adequate to effectuate its program proposal. In support of its request, petitioner notes that, notwithstanding the March 30, 1971, revision of its programing proposal which reflects 128 hours of nonduplicated FM programing, WVOC neither provided for additional program origination equipment nor indicated how the studio facilities of Station WVOC could be utilized in order to permit the simultaneous operation of the proposed FM facility and Station WVOC during the daytime. Rather, notes Michigan, WVOC merely repeated its initial response to paragraph 1(a), section III of FCC Form 301 that the necessary program origination equipment and studio facilities were "on hand", thereby indicating that no expenditures would be required for these items.[8] Arguing that it cannot be assumed, in the absence of a showing by WVOC, that the amended WVOC proposal will not result in the need for additional programing equipment and studio facilities, Michigan submits that an evidentiary inquiry in this regard is warranted. The Broadcast Bureau agrees with the petitioner that the requested issue should be added.

6. The serious questions raised by petitioner concerning WVOC's proposed equipment and technical facilities have not been resolved by WVOC's opposition pleading. WVOC makes no attempt to set forth the program origination equipment which is allegedly "on hand" and which will be used to effectuate its FM proposal when Station WVOC is simultaneously broadcasting. Nor does the applicant explain the manner in which the Station WVOC studio facilities can be utilized by both operations at the same time.[9] Since we are unable to determine, on the basis of the pleadings before us, whether WVOC has the necessary program origination equipment and adequate studio facilities to effectuate its programing proposal, the Review Board will specify an appropriate issue under which these serious questions can be resolved. See Kittyhawk Broadcasting Corp., 8 FCC 2d 839, 844–45, 10 RR 2d 628, 636 (1967).

ENGINEERING ISSUE

7. On March 2, 1971, WVOC amended the engineering portion of its application (sections V–B and V–G) to reflect that the existing radio tower, upon which the FM antenna of the proposed station will be sidemounted, will be increased in height from 180 feet to 240 feet.[10] Michigan contends that the proposed FM tower structure will reradiate the signal of Station WBCK and possibly distort the daytime and nighttime directional radiation patterns of that station, whose transmitter is located only 0.7 mile from the WVOC transmitter site.[11] The addition of an issue to permit the exploration of this possible reradiation problem at the hearing is requested by petitioner. Alleging that reradiation problems of this nature are most readily resolved by empirical methods pursuant to well established engineering procedures, the Broadcast Bureau opposes petitioner's request and argues that the matter can be alleviated by appropriately conditioning a grant of the WVOC application.[12]

8. The Review Board will deny the requested issue. Michigan's allegations do not comport with the specificity requirements of § 1.229(c). Rather than submit an engineering analysis indicating the probable magnitude of the distortions in Station WBCK's directional radiation patterns, Michigan has chosen to rely solely upon its engineer's belief that there is a "good possibility" that distortion will result. Michigan has not alleged that it would be impractical or impossible for WVOC to correct any distortions which might occur in the Station WBCK directional radiation patterns by detuning the proposed FM antenna structure. In view of the foregoing circumstances, addition of the requested issue is not warranted. Cf. Pettit Broadcasting Co., FCC 71R–252, 22 RR 2d 717, released August 18, 1971; Babcom, Inc., 13 FCC 2d 268, 13 RR 2d 435 (1965). However, the erection of the proposed FM antenna structure at the Station WVOC transmitter site and in close proximity to the transmitter site of Station WBCK does warrant the provision of a means to detect and cope with any reradiation and interaction of the signals of these standard broadcast directional operations. In light of the above and the applicant's apparent failure to comply with the provisions of § 73.316 (i),[13] the Review Board will, on its own motion, require that WVOC, as a condition to a grant of its application, make appropriate tests prior and subsequent to construction in order to insure that said construction will not adversely affect the operation of the directional antenna systems of standard broadcast Stations WVOC and WBCK. See § 73.316(i); and Babcom, Inc., supra.

[6] Claiming that the annual salary cost for a separately staffed FM station of six full-time and one part-time employees would exceed WVOC's $18,000 budget for first-year operating expenses, Michigan contends, in its reply pleading, that a joint AM–FM staff is proposed, and that WVOC has not demonstrated the manner in which its proposed AM–FM staff can effectuate the FM station's programing proposal.

[7] WHCN, Inc. (WHCN–FM), 25 FCC 2d 673, 19 RR 2d 1017 (1970), the case relied upon by both the petitioner and the Broadcast Bureau, is inapposite. Unlike the instant situation, the five employees proposed to implement that FM station's 119 hours of weekly broadcast time were also required to gather, edit and present the news programs, a major program emphasis of that station. As previously noted, WVOC, which will devote 6 hours a week (4.6 percent of its weekly schedule) to news programs, intends to rely upon the news staff and news wire facilities of Station WVOC, whose assistance is not challenged by petitioner. Cf. Tri County Broadcasting Company, 27 FCC 2d 1013, 21 RR 2d 380 (1971); Cosmopolitan Enterprises, Inc., 4 FCC 2d 639, 8 RR 2d 180 (1966).

[8] By comparison, Michigan points out that while it will utilize the facilities of its unlimited-time AM facility in Battle Creek, Station WBCK, it has allocated over $14,000 for additional program origination equipment and remodeling costs to effectuate its unduplicated program format.

[9] In fact, WVOC does not address itself to this matter in its opposition pleading.

[10] The tower, formerly utilized by Station WVOC in its directional operation, is located adjacent to the Station WVOC transmitter-studio building, from which structure the applicant's FM operation will also be directed. A 240-foot tower represents an electrical height of 0.23 wavelength at Station WBCK's authorized frequency.

[11] An attached affidavit of Station WBCK's consulting engineer supports the petitioner's contentions.

[12] WVOC does not oppose the imposition of such a condition, and submits that, if necessary, it will utilize the considerable detuning equipment assertedly on hand at Station WVOC to remedy any reradiation of the Station WBCK signal.

[13] In pertinent part, § 73.316(i) requires that "[W]hen the proposed FM broadcast antenna is to be mounted on a tower in the vicinity of a standard broadcast directional array and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the FM broadcast application concerning the effect of the FM broadcast antenna on the directional pattern". The required engineering study does not accompany the WVOC application.

FINANCIAL ISSUE

9. In its amended application, WVOC indicates that it will require funds totaling $38,511.80 in order to construct and operate the proposed station for one year, and that it has available $30,810.00 from a bank loan and a deferred credit arrangement with its equipment supplier, $11,116.39 in existing capital and $4,379.22 in certified accounts receivable for a total of $46,305.61. Petitioner argues, however, that WVOC has inflated its available funds and understated its cost estimates. Specifically, Michigan contends that WVOC has failed to deduct current liabilities of $7,310 from its available assets; that WVOC's allocation of $1,000 for preoperation legal expenses is insufficient by at least $6,000 in view of the comparative hearing that will ensue; and that WVOC will incur additional costs in order to provide adequate program origination equipment and necessary studio facilities to effectuate its nonduplication programing proposal (see paragraph 5, supra). An inquiry concerning the WVOC financial proposal is requested by petitioner.

10. In determining the amount of available funds, upon which an applicant can rely to finance its proposed station, the Commission looks to the applicant's net liquid asset position, rather than merely to its current assets.[14] See Edward G. Atsinger III, 29 FCC 2d 443, 21 RR 2d 1039 (1971); and Albert L. Crain, 26 FCC 2d 571 (1970). Offsetting WVOC's current assets of existing capital and certified accounts receivable by its current liabilities ($15,485.61 less $7,310), the applicant's net liquid assets total $8,175.61, and when this sum is added to the applicant's other available funds ($30,810 in loans and deferred credit), it appears that WVOC's available funds ($38,985.61) exceed its estimated costs ($38,511.80) by $473.81. A financial issue will not be added where, as here, an applicant has shown the availability of funds in excess of the amount required to construct and operate the proposed station for 1 year. See Edward G. Atsinger III, supra. While petitioner challenges the adequacy of WVOC's cost estimates, Michigan's allegations pertaining to the applicant's allocation for legal expenses lack the specificity and supporting documentation required by § 1.229(c). See Almardon Incorporated of Florida, 16 FCC 2d 395, 15 RR 2d 600 (1969); and Lorain Community Broadcasting Company, 5 FCC 2d 810, 8 RR 2d 1141 (1966). Similarly, Michigan's assertions concerning additional expenditures by the applicant for program origination equipment and studio facilities are premised upon a need which is to be determined at the hearing (see paragraph 6, supra), and thus do not adequately support the addition of the requested financial issue at this time. Moreover, the petitioner has not shown that these assumed construction expenses as well as the engineering expenses incident to the conditions specified by the Board (see paragraph 8, supra) would so impair WVOC's surplus funds and its allocation for miscellaneous construction expenses ($500.00) as to warrant the addition of a financial issue. See Jay Sadow (WRIP), 27 FCC 2d 248, 20 RR 2d 1171 (1971); Home Service Broadcasting Corporation, 21 FCC 2d 168, 18 RR 2d 63 (1970); and Cherokee Broadcasting Co., 8 FCC 2d 138, 142, 9 RR 2d 1277, 1282 (1967).

11. *Accordingly, it is ordered,* That the petition to enlarge issues, filed July 19, 1971, by Michigan Broadcasting Co., is granted to the extent indicated below, and is denied in all other respects; and

12. *It is further ordered,* That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether WVOC, Inc., possesses adequate program origination equipment and technical facilities to effectuate its proposed operation and, if not, the effect thereof upon the applicant's technical qualifications; and

13. *It is further ordered,* That the burdens of proceeding and proof under the issue added herein shall be on WVOC, Inc.; and

14. *It is further ordered,* That, on the Board's own motion, in the event of a grant of the application of WVOC, Inc. (BPH–7005), for a construction permit, such grant shall be subject to the following conditions:

Before program tests are authorized, permittee shall file with the Commission sufficient field intensity measurements made on standard broadcast Station WBCK to satisfactorily demonstrate that the Station WBCK daytime and nighttime directional radiation patterns have not changed as a result of permittee's construction. The minimum required measurements, made prior and subsequent to said construction, shall include at least ten (10) consecutive points for each of the radials included in the last complete Station WBCK proofs of performance on file with the Commission. Permittee shall assume responsibility for all costs involved in complying with this condition.

During construction, Station WVOC shall determine the operating power by the indirect method and shall maintain the directional antenna system as closely as possible to values appearing in the license. Upon completion of construction, the common point resistance shall be remeasured and the results submitted with FCC Form 302 in Station WVOC's request to determine the operating power by the direct method. In addition, a skeleton proof shall be submitted, consisting of at least five (5) field intensity measurements on each radial measured in connection with the last complete Station WVOC proof of performance filed with the Commission to prove that the directional pattern of Station WVOC has not been changed. Data submitted shall include a tabulation of all pertinent meter indications and the measured fields at the monitoring locations and a sketch of the complete installation showing pertinent dimensions.

Adopted: December 16, 1971.

Released: December 17, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-18676 Filed 12-21-71;8:47 am]

[14] Paragraph 4(b) of section III, FCC Form 301, requires an applicant to submit a financial statement "showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities * * * and, in addition, to indicate financial ability". Also see column II, paragraph 1(c) of section III which requires a listing of net existing capital. In addition, the Board notes the lack of a showing that the applicant's current liabilities can be discounted by reliance on the cash flow of Station WVOC. See Eastern Broadcasting Corporation, 30 FCC 2d 745, 22 RR 2d 472 (1971), review dismissed 32 FCC 2d 187 (1971).

FEDERAL MARITIME COMMISSION

PACIFIC FAR EAST LINE, INC. AND DELTA LINE, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Edward L. Formoso, Regional Manager, Southeastern Territory, Pacific Far East Line, Inc., 918 16th Street NW., Washington, DC 20006

Agreement No. 9855, between Pacific Far East Line, Inc. and Delta Line, Inc., is a memorandum of understanding whereby Delta Line, Inc., if requested to do so, will perform normal vessel husbanding functions for the SS Mariposa

when she calls at Rio de Janeiro, Brazil, and Salvador (Bahia), Brazil in connection with an around-the-world cruise scheduled to depart from San Francisco, Calif., March 9, 1972.

Dated: December 17, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18712 Filed 12-21-71;8:50 am]

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. James E. Mazure, Chairman, Trans-Pacific Freight Conference of Japan, Second Floor, Sumitomo Seimei Yaesu Building 3, Yaesu 4-Chome, Chuo-Ku, Tokyo 104, Japan.

Agreement No. 150-54 modifies the Trans-Pacific Freight Conference of Japan's basic agreement by expanding its geographic scope to include "inland points in the United States of America via such ports" in California, Oregon, and Washington.

Dated: December 17, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-18713 Filed 12-21-71;8:50 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 11(p)(1) of the Federal Water Pollution Control Act, as amended, and, accordingly, have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	*Owner/Operator and Vessels*
01145---	Det Bergenske Dampskibsselskab: Royal Viking Star.
01230---	Skibs A/S Oiltank: Belmar.
01240---	Jensens Rederi-I. (Shipowner Marlow Wangen, Arendal, Norway): Curro.
01982---	AB Svenska Ostasiatiska Kompaniet: Fujisan.
02147---	Mathiasen's Tanker Industries, Inc.: Sohio Resolute.
02199---	Atlantic Richfield Co.: Arco Prudhoe Bay.
02475---	Houston Barge Line, Inc.: EIDC 52.
02492---	Interstate Oil Transport Co.: Ocean 255.
02980---	Rederi A/S Mimer and A/S Norfart: Aniara.
02982---	The Shipping Corp. of India: S/O Madhya Pradesh. S/O West Bengal. Vishva Nayar.
03292---	Maritimecor, S.A.: Nordland.
03424---	Fuji Kisen K.K.: Santiago Maru. Tatsutasan Maru. No. 2 Mitsui Maru.
03524---	Towa Kisen K.K.: Toju Maru.
03611---	Villain & Fassio e Compagnia Internazionale di Genova Societa Riunite di Navigazione S.P.A.: Atlantica Genova.
03918---	Mobil Shipping & Transportation Co.: Mobil Progress.
03926---	Harumi Senpaku Kabushiki Kaisha: Kamo Maru. Nelson Maru.
04043---	The Ralph M. Parsons Co. of Africa: Argo.
04196---	Otto Candies, Inc.: OC-250. OC-251.
04398---	Hapag-Lloyd Aktiengesellschaft: Rhein Express.
M-04401	Todd Shipyards Corp.: Vessels held for purposes of construction, scrapping, or sale.
04449---	China Merchants Steam Navigation Co., Ltd.: Hai Lo.
04512---	Seiju Gyogyo K.K.: Seishu Maru No. 21.
04939---	Panocean Ship Management Ltd.: Post Ranger.
05097---	Esso Transport Co., Inc.: Esso Dallas.
05185---	Storm Drilling Co.: Typhoon. Stormdrill I. Stormdrill II. Stormdrill III. Stormdrill IV. Stormdrill VI.
05529---	Julio Zakzuk Haine Cay. Don Alejo. Don Julio.
05735---	Solstad Rederi A/S: Soldrott.
06320---	Shinnaka Kaiun Kabushiki Kaisha: Enterprise
06362---	The City of New York Department of Marine and Aviation: Pvt. Joseph Merrell. Cornelius G. Kolff. Verrazzano. Gold Star Mother. Mary Murray. Miss New York. John F. Kennedy. American Legion. Gov. Herbert H. Lehman.
06377---	Elix Navigation Corp.: Anastasia E.
06393---	Canadian National Steamship Co., Ltd.: Prince George.
06407---	Lato Shipping Co. S.A., Panama: Lato.
06415---	Luis Compania Naviera S.A.: Luis.
06421---	Beacons Navigation S.A.: Beacons.
06424---	The Pelee Shipping Co., Ltd.: Pelee Islander.
06425---	Mainland Shipping Co.: Tripoli.
06429---	Ta Cheng Marine Co., Ltd.: M/V. Fu Chiao.
06430---	Antilliaanse Vrachtvaart Maatschappij N.V.: Nedlloyd Niger.
06443---	Erjac Ocean Lines Ltd.: Nordfels.
06451---	Cities Service Oil Co.: Cities Service No. 1.
06453---	Elmini Limit Inc.: Mini Limit.
06454---	Elmini Lee Inc.: Mini Lee.
06455---	Elmini Labor Inc.: Mini Labor.
06456---	Elmini Loaf Inc.: Mini Loaf.
06457---	Elmini Lid Inc.: Mini Lid.
06458---	Elmini Lantern Inc.: Mini Lantern.
06459---	Todd Ltd. Corp.: Todd.
06461---	Interessentskapet Obo Queen: Obo Queen.
06463---	Plym Shipping Co., Ltd.: Plym.
06468---	Jadranska Linijska Plovidba, Rijeka: Dalmacija. Istra.
06471---	Southern Atlantic Navigation Corp. Ltd.: Yvonne. Loretta.
06472---	Taiheiyo Kisen Kaisha, Ltd.: Chiaki Maru.
06477---	Rederiet Pia Vesta I/S: Pia Vesta.
06480---	N.V. Zeelichter "Thames II": John V.

Certificate No.	Owner/Operator and Vessels
06482	Alpha Transport Corp.: Atalanti.
06483	Strathpark Shipping Co.: Glenpark.

By the Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-18714 Filed 12-21-71;8:51 am]

OCEANO CRUISE LINE, S.A., ET AL.

Notice of Issuance of Performance Certificate

Security for the protection of the public; indemnification of passengers for nonperformance of transportation.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Oceano Cruise Line, S.A. and Caribe Cruise Line, Inc. (Caribe Cruise Lines), Post Oak National Bank Building, Suite 728, 2200 South Post Oak, Houston, TX 77027.

Dated: December 17, 1971.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-18715 Filed 12-21-71;8:51 am]

FEDERAL POWER COMMISSION

[Dockets Nos. RP72-73, RP71-7]

ALABAMA-TENNESSEE NATURAL GAS CO.

Notice of Proposed Change in Tariff Provisions

DECEMBER 15, 1971.

Take notice that on November 17, 1971, Alabama-Tennessee Natural Gas Co. filed in Docket No. RP72-73 a proposed change in its FPC Gas Tariff. The company's letter of transmittal appears below.[1]

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 20, 1971. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. The company's application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-18686 Filed 12-21-71;8:47 am]

[1] Filed as part of the original document.

[Docket No. CP72-157]

DELHI GAS PIPELINE CORP.

Notice of Application

DECEMBER 16, 1971.

Take notice that on December 9, 1971, Delhi Gas Pipeline Corp. (applicant), Fidelity Union Tower Building, Dallas, Tex. 75201, filed in Docket No. CP72-157 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) in Van Zandt County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has commenced the sale of natural gas to United within the contemplation of § 2.68 of the Commission's General Policy and Interpretations (18 CFR 2.68) and that itpropretations (18 CFR 2.68) and that it proposes to continue said sale until June 1, 1973, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70) at the rate of 35 cents per million B.t.u. The average daily quantity of gas to be delivered is 13,000 Mcf.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-18687 Filed 12-21-71;8:48 am]

[Project 2237]

GEORGIA POWER CO.

Notice of Application for Change in Land Rights

DECEMBER 16, 1971.

Public notice is hereby given that application for approval of the conveyance of project property to Fulton County, Ga., for use only as a public park and recreation area, has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Georgia Power Co. (correspondence to Mr. I. S. Mitchell, III, vice president and secretary, Georgia Power Co., Post Office Box 4545, Atlanta, GA 30302) in Project No. 2237, located in Fulton and Cobb Counties, in Georgia. The project land to be conveyed is in Fulton County, Ga.

The application seeks Commission approval of a proposed conveyance of all of the project lands, including the project reservoir, below contour elevation 868 feet (plant datum), which corresponds to 855.61 feet (MSL), excluding all lands south of a line located 800 feet north of and parallel to the Morgan Falls Dam. The proposed conveyance would be to Fulton County for use only as a public park and recreation area. The proposed park's facilities, which would be located along the west bank of the Chattahoochee River, would include: one casting pool area, six picnic areas, one marina area, three overlooks, one concession area, and nature areas. The east bank of the river would be maintained as nature areas. The licensee plans to retain the right to use all of the conveyed lands for Project No. 2237 purposes. The normal operating reservoir level of Project No. 2237 is 866 feet (plant datum).

Any person desiring to be heard or to make any protest with reference to said application should on or before January 24, 1972, file with the Federal Power Commission, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.71-18691 Filed 12-21-71;8:48 am]

[Dockets Nos. CP72-146, CP72-147]

MICHIGAN CONSOLIDATED GAS CO. ET AL.

Notice of Applications

DECEMBER 16, 1971.

On November 29, 1971, Michigan Consolidated Gas Co. (Consolidated) and Northern Indiana Public Service Co. (Northern Indiana), filed in Docket No. CP72-146, a joint application pursuant to section 1(c) of the Natural Gas Act and § 152.5 of the Commission's regulations thereunder (18 CFR 152.5) for continuance of their respective exemptions from the provisions of said Act, all as more fully set forth in the joint application, and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) filed in Docket No. CP72-147 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation of natural gas, construction and operation of related facilities, and exchange of natural gas, all as more fully set forth in the application. Both applications are on file with the Commission and open to public inspection.

Consolidated and Northern Indiana have entered into a gas storage agreement which provides that Northern Indiana will cause to be delivered to Michigan Wisconsin for the account of Northern Indiana, a total of 5 million Mcf of natural gas at a daily rate of 25,000 Mcf for transportation and delivery to Consolidated for storage during the period March 1 through October 31 in each of the years 1972 and 1973 (the summer periods), and Consolidated will redeliver to Michigan Wisconsin for the account of Northern Indiana an equivalent volume of natural gas at such daily rate, up to 150,000 Mcf, as Northern Indiana may request, during the period November 1 through January 31 in each of the years 1972 and 1973 (the winter periods). To implement the storage agreement, Michigan Wisconsin and Northern Indiana have entered into a transportation agreement which provides that Northern Indiana will cause Natural Gas Pipeline Co. of America (Natural), one of its existing suppliers, to deliver to Michigan Wisconsin for the account of Northern Indiana a total of 5 million Mcf of natural gas at a daily rate of up to 25,000 Mcf for transportation and delivery to Consolidated for storage during each of the summer periods, and Michigan Wisconsin will redeliver to Northern Indiana an equivalent volume of natural gas at such daily rate, up to 150,000 Mcf, as Northern Indiana may request, during each of the winter periods. In further implementation of the storage agreement, Michigan Wisconsin has entered into an exchange agreement with Consolidated which provides that redelivery of the gas by Consolidated to Michigan Wisconsin during the winter periods will be effected by a corresponding reduction in the volume of gas Consolidated would normally receive from Michigan Wisconsin during such periods under its existing service agreement with Michigan Wisconsin. Northern Indiana states that the aforesaid agreements, which are for a limited period, constitute a temporary arrangement to assist it in meeting anticipated market requirements during the winter periods of 1972-73 and 1973-74 and to provide it with the lead-time necessary to design and install the peak shaving facilities which will be necessary upon termination of said agreements.

Northern Indiana is a public utility engaged in the transportation, distribution, and sale of natural gas at retail within the State of Indiana. It is exempt from the provisions of the Natural Gas Act pursuant to section 1(c) thereof as determined by Commission order issued in Docket No. G-2536 on October 21, 1954 (13 FPC 1461). Consolidated is a public utility engaged in the transportation, distribution, storage, and sale of natural gas at retail within the State of Michigan. It is exempt from the provisions of the Natural Gas Act pursuant to section 1(c) thereof as determined by Commission order issued in Docket No. G-6507 on February 3, 1955 (14 FPC 535). The rates, services, and facilities of these joint applicants are subject to State regulatory jurisdiction.

Consolidated and Northern Indiana state that the gas delivered to Consolidated by Michigan Wisconsin pursuant to the transportation agreement will be delivered at existing delivery points located within the State of Michigan and that all such gas will be consumed within said State. They state further that the gas redelivered to Northern Indiana by Michigan Wisconsin pursuant to said transportation agreement will be delivered to Northern Indiana at a proposed new delivery point in La Porte, Ind., and that all such gas will be consumed within said State. Michigan Wisconsin indicates that gas received by it for redelivery to Consolidated in Michigan will be delivered to Michigan Wisconsin by Natural at a point of interconnection of their facilities near Janesville, Wis., and at other such points of interconnection. Consolidated and Northern Indiana request that the Commission find that they will continue to remain exempt from the Natural Gas Act.

In order to provide the transportation service for Northern Indiana, Michigan Wisconsin proposes to install a total of 6,000 horsepower of compression at its St. John Compressor Station in Indiana and its Hamilton Compressor Station in Michigan, and a new meter station in La Porte, Ind. Total cost of the proposed facilities is estimated by applicant to be $1,456,000, which it proposes to finance by bank borrowings under lines of credit, together with retained earnings and other funds internally generated.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on the application in Docket No. CP72-147 if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition to intervene is filed within the filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Michigan Wisconsin to appear or be represented at the hearing in Docket No. CP72-147.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18392 Filed 12-21-71;8:48 am]

[Docket No. E-7523]

CENTRAL TELEPHONE AND UTILITIES CORP.

Notice of Application

DECEMBER 20, 1971.

Take notice that on October 22, 1971, Central Telephone and Utilities Corp. (applicant) filed a supplemental application pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of up to $85 million of unsecured promissory notes to commercial banks and commercial paper dealers.

The Commission by order issued March 20, 1970, in the above-mentioned docket authorized applicant to issue unsecured promissory notes in the aggregate principal amount of $50 million outstanding at any one time and conditioned upon the final maturity of all notes to be issued being not later than May 31, 1972.

The supplemental order now sought by applicant requests authority to increase the aggregate principal amount of promissory notes which may be outstanding at any one time from $50 million to $75 million and to extend the latest permissible maturity date to May 31, 1975, and in addition to authorize the borrowing of up to $10 million at any one time in the form of demand notes.

Applicant is incorporated under the laws of the State of Kansas with its principal business office in Lincoln, Nebr. It is engaged in the electric utility operations in the southeastern

part of Colorado and the central and western portions of the State of Kansas. Applicant states that it is also the parent corporation of certain subsidiaries principally engaged in the telephone business.

Interest on the proposed notes to banks will be at the prime rate of up to one-fourth of 1 percent above the prime rate from time to time in effect of such banks; the interest rate on commercial paper will be the rate then in effect for commercial paper of such quality and term; the interest rate on demand notes will be the rate then in effect for commercial paper of like quality having maturities of from 90 to 180 days issued directly by an issuer rather than issued through a dealer.

The applicant further states that the proceeds from the issuance of the securities to be issued will provide funds for construction, completion, extension, and improvement of facilites and for advances to and investments in subsidiaries of applicant for similar purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-18821 Filed 12-21-71;10:13 am]

FEDERAL RESERVE SYSTEM

AMERICAN GENERAL INSURANCE CO.

Acquisition of Banks

American General Insurance Co., Houston, Tex., has applied in three separate applications as listed below for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire indirectly (through its subsidiary Texas Commerce Bancshares, Inc., Houston, Texas):

1. 100 percent of the voting shares (less directors' qualifying shares) of The American National Bank of Beaumont, Beaumont, Tex.

2. 37 percent or more of the voting shares of Beaumont State Bank, Beaumont, Tex.

3. 100 percent of the voting shares (less directors' qualifying shares) of MacGregor Park National Bank of Houston, Houston, Tex. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to coment on the applications should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 17, 1972.

Board of Governors of the Federal Reserve System, December 15, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18652 Filed 12-21-71;8:46 am]

TEXAS COMMERCE BANCSHARES, INC.

Acquisition of Banks

Texas Commerce Bancshares, Inc., Houston, Tex., has applied in three separate applications as listed below for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire:

1. 100 percent of the voting shares (less directors' qualifying shares) of the American National Bank of Beaumont, Beaumont, Tex.

2. 37 percent or more of the voting shares of Beaumont State Bank, Beaumont, Tex.

3. 100 percent of the voting shares (less directors' qualifying shares) of MacGregor Park National Bank of Houston, Houston, Tex. The factors that are considered in acting on the applications are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The applications may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the applications should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 17, 1972.

Board of Governors of the Federal Reserve System, December 15, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-18653 Filed 12-21-71;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[812-2850]

E. I. DU PONT DE NEMOURS AND CO.

Notice of Filing of Application

DECEMBER 9, 1971.

Notice is hereby given that E. I. du Pont de Nemours and Co., Wilmington, Delaware 19898 (Applicant), a Delaware corporation, has filed an application pursuant to Section 17(d) of the Investment Company Act of 1940 (Act) and Rule 17d-1 thereunder for an order under Rule 17d-1 authorizing the exercise of certain stock options issued by Applicant, pursuant to its Bonus Plan C, to Mr. Irénée du Pont, Jr. (a vice-president and a director of Applicant, also president and a director of Christiana Securities Co. (Christiana)) and Mr. Lammot du P. Copeland (Chairman of the Board of Directors of Applicant, also a vice-president and a director of Christiana). The options involved had been issued by Applicant and were outstanding on August 10, 1970, when the Commission amended Rule 17d-1 to expressly apply to stock options, as discussed below. All interested persons are referred to the application on file with the Commission for a full statement of the representations therein, which are summarized below.

Christiana, a registered closed-end, nondiversified investment company, owns approximately 28.5 percent of the outstanding common stock of Applicant. Under section 2(a)(9) of the Act, Applicant is presumed to be controlled by Christiana. Under section 2(a)(3) of the Act, (1) Applicant and Christiana are affiliated persons of each other, and (2) officers, directors and employees of Applicant and Christiana are affiliated persons of their respective companies.

At the present time, Mr. Irénée du Pont, Jr. holds options to purchase 6,088 shares of Applicant's stock at exercise prices ranging from $96.25 to $162.25, which were granted under Plan C in the years 1967 through 1970, and Mr. Lammot du P. Copeland holds options to purchase 7,304 shares of such stock at exercise prices ranging from $156.25 to $248.25, which were granted under Plan C in the years 1962, 1963, and 1967. The closing price of Applicant's common stock on the New York Stock Exchange on November 30, 1971, was 139¾.

Bonus Plan C is administered entirely by the Bonus and Salary Committee, an impartial committee of five members of Applicant's Board of Directors, none of whom is eligible for bonus awards. The maximum number of shares for which options may be awarded in any year to any participant under the Plan is 12,000 shares. Within this limitation, the amount, if any, of individual awards under Plan C is determined by the exercise of judgment by the Bonus and Salary Committee, based upon the recommendation of the employee's superior. As of February 1, 1971, Applicant had 47,385,469 shares of common stock outstanding.

The terms and conditions of the stock options granted under Plan C are fixed by Applicant's Bonus and Salary Committee, within certain limitations, including the following:

1. The price per share of the stock which is the subject of the option shall in no case be less than the average of the high and low prices of the stock on the New York Stock Exchange on the date of the granting of the option or, if no sale of the stock shall have been made on such Exchange on that date, on

the next preceding date on which there was such a sale.

2. A stock option shall in no case be exercisable prior to January 2 of the year following the date of grant or the expiration of ten months after the date of grant, whichever is later. Thereafter, an option may be exercisable to the extent of 50 percent of the number of shares optioned. After the lapse of an additional year, it may be exercisable to the extent of an additional 25 percent of the shares, and it may be exercisable as to the balance after the lapse of a second additional year.

3. Under the terms of the Plan, stock options may be issued which are exercisable for 10 years from the date the option is granted; however, stock options granted after December 31, 1963, in order to qualify under section 422 of the Internal Revenue Code as a qualified stock option, have been, by their terms, exercisable for not more than 5 years from the date of grant.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide, among other thing, that it shall be unlawful for an affiliated person of a registered investment company or any affiliated person of such a person acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company, or a company controlled by such registered company, is a participant unless an application regarding such arrangement has been granted by the Commission, and that, in passing upon such an application, the Commission will consider whether the participation of such registered company or controlled company in such arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Rule 17d–1 was amended on August 10, 1970 (Investment Company Act Release No. 6154), to include any stock option or stock purchase plan within the definition of "joint enterprise or other joint arrangement or profit sharing plan" as used in the rule. The amended rule, as here pertinent, exempts transactions in connection with any stock option plan of a company controlled by a registered investment company if the participants are not affiliated persons of the investment company.

Notice is further given that any interested person may, not later than December 30, 1971 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71–18637 Filed 12–21–71;8:45 am]

[812–3055]

SHELTER PARTNERSHIP OF AMERICA AND SHELTER FINANCIAL CORP.

Notice of Filing of Application for Exemption From All Provisions

DECEMBER 9, 1971.

Notice is hereby given that Shelter Partnership of Amercia, 1550 East 78th Street, Minneapolis, MN 55423, a Minnesota limited partnership (Partnership), and Shelter Financial Corp., its general partner (General Partner), collectively referred to as "Applicants" have filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order exempting them from all sections of the Act and the rules and regulations promulgated thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Partnership was organized on August 27, 1971, and is designed to implement the policy stated by Congress in the Housing and Urban Development Act of 1968 to provide private investors a means to acquire equity interests in low- and moderate-income housing units. Partnership has filed a registration statement on Form S–11 with the Commission under the Securities Act of 1933 covering $12 million of limited partnership interests.

Applicants state that the cash returns available to investors in governmentally assisted housing projects (subsidized projects) is limited by applicable legislation, and, therefore, investment in subsidized projects is attractive only to the extent the sizable net tax losses these projects generate can be made available for offset against an investor's income from other sources. Tax losses resulting primarily from mortgage loan interest expense and depreciation deductions are available to investors in high tax brackets to offset taxable income from other sources. For this reason Partnership will not accept a subscription for a limited partnership interest unless the subscriber represents that he has currently, and anticipates that he will continue to have for the foreseeable future, income, some part of which is subject to Federal income tax at a marginal rate of at least 40 percent. The limited partnership interests will be offered in units of $1,000, and the minimum investment will be $12,000. Applicants state that a limited partnership is the only vehicle which provides (1) the passing through, without taxation, of both the cash and the net operating profits and losses generated by the project; and (2) the centralization of management necessary for a publicly held investment vehicle, and which protects the investors from the unacceptable risk of personal liability.

Partnership proposes to make investments in Subsidized Projects by assuming the position of a limited partner in a subsidiary partnership in which the sponsor or developer of the Subsidized Project is the general partner. Each of the Subsidized Projects in which the Partnership will acquire an interest will be constructed and operated in accordance with the requirements of the Federal or State agency administering the program pursuant to which each project is receiving assistance. In the event that it is unable to find sufficient Subsidized Projects sponsored by independent developers, the partnership may, subject to certain limitations, invest in Subsidized Projects developed by Shelter Corporation of Americas, parent of the General Partner.

The subsidiary partnership will own the entire equity interest in the Subsidized Project and the Partnership will always have a majority of the interests in the subsidiary partnership, typically 95 percent. Partnership's interest in the subsidiary partnership will be tantamount to direct ownership of the property and will have no value other than the value of the project itself nor will it generate income other than from the operation of the project.

To preserve its limited partner status, the Partnership must not participate in the management of the project. However, the terms of the subsidiary partnership agreement, which will govern all aspects of management of the Subsidized Project, will be negotiated by Partnership prior to its investment. Partnership represents that it will, among other things, reserve the right in each case to remove the developer or sponsor from the subsidiary partnership if such developer or sponsor becomes insolvent or fails to observe applicable statutes and regulations. In addition, the subsidiary partnership will not be permitted to sell or assign any interest in the project, or withdraw or substitute or add a general partner without the consent of Partnership.

Partnership's investments will be governed by policies which may not be changed without the vote of the holders of at least a majority of the outstanding partnership interests. Limited partner investors in the Partnership will have voting rights with respect to, among other things, dissolution or transfer of

assets of the Partnership and withdrawal, substitution or addition of any general partner.

General Partner will keep Partnership's books and records and furnish annually reports containing audited financial statements and information required by the limited partners for the preparation of their income tax returns. General Partner will also be responsible for the conduct of Partnership's operations including the origination, investigation and management of investment. General Partner will receive an acquisition fee with respect to each Subsidized Project acquired by Partnership and, commencing in 1974, an annual management fee. General Partner will be required to repurchase from Partnership at its cost its interest in any Subsidized Project which is not completed within twelve months of the originally estimated completion date. General Partner will receive fees from the subsidiary partnerships in which Partnership invests for marketing and advisory services rendered to the project during its initial rent-up period and will also receive a portion of proceeds to Partnership upon the sale or refinancing of a Subsidized Project.

Applicants state they do not concede Partnership is an investment company as defined by the Act, and believe sufficient cause exists for finding Partnership not to be an investment company as therein defined. In any event, they submit, further, that denial of the exemption under 6(c) would eliminate the only feasible type of vehicle for attracting private equity capital for the publicly assisted housing market and would frustrate national policy. Applicants further submit the requested exemption would be consistent with the public interest and the protection of investors.

Section 6(c) of the Act provides, as herein pertinent, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from the provisions of the Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is hereby given that any interested person may, not later than December 29, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-18638 Filed 12-21-71;8:45 am]

POSTAL SERVICE

MAIL RECLASSIFICATION

Notice of Public Meeting

The U.S. Postal Service will hold a public forum on mail reclassification on January 17, 1972, at 9:30 a.m. The meeting will be held in the Departmental Auditorium, north side of Constitution Avenue between 12th and 14th Streets NW., Washington, D.C.

The Postal Reorganization Act requires submission of a proposed mail classification schedule to the Postal Rate Commission by January 20, 1973. (See 39 U.S.C. 3623, which became effective on January 20, 1971, 36 F.R. 785). In developing its proposals, the Postal Service is seeking the views of business mailers and the general public. Business mailers have regular opportunities for dialogue with the Postal Service through the Mailers' Technical Advisory Committee, the more than 500 Postal Customer Councils throughout the country and the annual National Postal Forum in Washington, D.C. The January 17 meeting is intended specifically to give private citizens the opportunity to offer suggestions for reclassification of postal products.

Individuals who are unable to attend the meeting may submit written suggestions to the Director, Office of Sales, U.S. Postal Service, Post Office Box 603, Washington, DC 20044.

LOUIS A. COX,
Solicitor.

DECEMBER 17, 1971.

[FR Doc.71-18681 Filed 12-21-71;8:47 am]

TARIFF COMMISSION

[TEA-W-127]

SERVICE HEEL CO.

Workers' Petition for Determination of Eligibility to Apply for Adjustment Assistance; Notice of Investigation

Upon petition under section 301(a)(2) of the Trade Expansion Act of 1962 filed on behalf of the workers of the Service Heel Company, Lawrence, Mass., the U.S. Tariff Commission on December 16, 1971, instituted an investigation under section 301(c)(2) of the said act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with heels for women's footwear (of the types provided for in items 772.30 and 207.00 of the Tariff Schedules of the United States) produced by the firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment, or underemployment of a significant number or proportion of the workers of such firm.

The petitioner has not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, 8th and E Streets, NW., Washington, DC, and at the New York City Office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: December 17, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.71-18671 Filed 12-21-71;8:47 am]

INTERSTATE COMMERCE COMMISSION

[Rev. S.O. No. 994; I.C.C. Order No. 26, Amdt. No. 11]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 26 (Atchison, Topeka, and Santa Fe Railway Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 26 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18710 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994; I.C.C. Order No. 47, Amdt. No. 6]

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 47 (The Chicago, Rock Island and Pacific Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 47 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18707 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994; I.C.C. Order No. 63, Amdt. No. 1]

LOUISVILLE AND NASHVILLE RAILROAD CO. AND BIRMINGHAM SOUTHERN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 63 and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 63 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., April 30, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18704 Filed 12-21-71;8:49 am]

[S. O. No. 994; I.C.C. Order No. 12, Amdt. No. 14]

NEW YORK, SUSQUEHANNA AND WESTERN RAILWAY CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 12 (New York, Susquehanna and Western Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 12 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18711 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994, I.C.C. Order No. 16, Amdt. No. 10]

PENN CENTRAL

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 16 (Penn Central) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 16 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18709 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994; I.C.C. Order No. 49, Amdt. No. 4]

PENN CENTRAL TRANSPORTATION CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 49 (Penn Central Transportation Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 49 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18708 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994; I.C.C. Order No. 57, Amdt. No. 6]

PENN CENTRAL TRANSPORTATION CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 57 (Penn Central Transportation Co., George P. Baker, Richard C.

Bond, Jervis Langdon, Jr., and Willard Wirtz, trustees), and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 57 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18708 Filed 12-21-71;8:50 am]

[Rev. S.O. No. 994; I.C.C. Order No. 61, Amdt. No. 3]

SUSQUEHANNA AND WESTERN RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 61 (New York, Susquehanna and Western Railroad Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 61 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1972, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1971, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 20, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-18705 Filed 12-21-71;8:49 am]

[Notice 34]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 17, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-1515 (Deviation No. 600), GREYHOUND LINES, INC., 1400 West Third Street, Cleveland, OH 44113, filed December 9, 1971. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 60 and the Blue Grass Parkway over the Blue Grass Parkway to junction U.S. Highway 127, thence over U.S. Highway 127 to Harrodsburg, Ky., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) from Lexington, Ky., over U.S. Highway 68 to Harrodsburg, Ky., (2) from Lawrenceburg, Ky., over Kentucky Highway 44 to junction Kentucky Highway 53, thence over Kentucky Highway 53 to Shelbyville, Ky., (3) from Cincinnati, Ohio, over U.S. Highway 25 to Lexington, Ky., thence over U.S. Highway 27 to Chattanooga, Ky., (4) from Huntington, W. Va., over U.S. Highway 60 to Louisville, Ky., and (5) from Lawrenceburg, Ky., over U.S. Highway 127 (formerly Kentucky Highway 35) via Harrodsburg to Danville, Ky., thence over U.S. Highway 159 via Stanford to Mount Vernon, Ky., and return over the same routes.

No. MC-30608 (Deviation No. 2), SOUTHERN KANSAS GREYHOUND LINES, INC., 124 North Cheyenne Avenue, Tulsa, OK 74103, filed December 6, 1971. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: Between Tulsa, Okla., and junction U.S. Highway 75 and Oklahoma Highway 20, over U.S. Highway 75, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Tulsa, Okla., over Oklahoma Highway 11 to junction Oklahoma Highway 20, thence over Oklahoma Highway 20 to junction U.S. Highway 75, and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18697 Filed 12-21-71;8:48 am]

[Notice 40]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 17, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 41432 (Deviation No. 14), EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway, Post Office Box 10125, Dallas, TX 75207, filed December 14, 1971. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From St. Louis, Mo., over Interstate Highway 44 to Oklahoma City, Okla., thence over U.S. Highway 66 to Barstow, Calif., thence over Interstate Highway 15 to San Bernardino, Calif., thence over Interstate Highway 10 to Los Angeles, Calif., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From St. Louis, Mo., over U.S. Highway 67 to Judsonia, Ark., thence over U.S. Highway 67 and 67C to Higginson, Ark., thence over U.S. Highway 67 to Little Rock, Ark., thence over

U.S. Highway 70 to Benton, Ark., thence over U.S. Highway 67 to Texarkana, Ark., thence over U.S. Highway 59 to Marshall, Tex., thence over U.S. Highway 80 to Las Cruces, N. Mex., thence over U.S. Highway 70 to Los Angeles, Calif., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18698 Filed 12-21-71;8:48 am]

[Notice 100]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 17, 1971.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 3468 (Sub-No. 161) (Republication), filed May 13, 1971, published in the FEDERAL REGISTER issue of June 4, 1971, and republished this issue. Applicant: F. J. BOUTELL DRIVEAWAY CO., INC., 705 South Dort Highway, Flint, MI 48501. Applicant's representative: Harry C. Ames, Jr., Suite 705, 666 11th Street NW., Washington, DC 20001. A supplemental order of the Commission, Operating Rights Board, dated November 22, 1971, and served December 13, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of automobiles, trucks, and buses as described in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, in initial movements, in truckaway service; (1) from the plantsites of the General Motor Corp. at Linden, N.J., and Wilmington, Del., to Detroit, Flint, and Pontiac, Mich.; and (2) from the plantsites of the General Motors Corp. at Linden, N.J., and Wilmington, Del., to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin, restricted in (2) above to the transportation of traffic moving through Detroit, Flint, or Pontiac, Mich.: Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 113362 (Sub-No. 200) (Republication), filed January 4, 1971, published in the FEDERAL REGISTER issue of February 4, 1971, and republished this issue. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50503. Applicant's representative: James Ellsworth, 4500 North State Line, Texarkana, AR 75501. A report and order, Review Board No. 3, decided November 30, 1971, and served December 13, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of canned goods and dog food, from the facilities of Allen Canning Co., Inc., at Gentry and at and near Siloam Springs, Ark., and at Kansas and Proctor, Okla., to the District of Columbia and points in Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, restricted to the transportation of shipments originating at the above-named origins and destined to points in the above-named destinations. Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 124669 (Sub-No. 28) (Republication), filed December 21, 1970, published in the FEDERAL REGISTER issue of February 19, 1971, and republished this issue. Applicant: TRANSPORT, INC., OF SOUTH DAKOTA, 1012 West 41st Street, Sioux Falls, SD 57105. Applicant's representative: Ronald B. Pitsenbarger, Post Office Box 396, Moorhead, MN 56560. An order of the Commission, Division 1, acting as an Appellate Division, decided November 11, 1971, served November 29, 1971, finds that by report and order of July 28, 1971, in the above-entitled proceeding, the Commission, Review Board No. 2; (a) concluded that imposition of a tacking restriction in the proceeding was unwarranted; and (b) granted authority to applicant as requested in the application: That the application as published in the FEDERAL REGISTER of February 19, 1971, stated that the requested authority could not be tacked with applicant's existing authority: That the FEDERAL REGISTER notice of February 19, 1971, in this matter was incorrect in that the authority as granted in this proceeding can in fact be tacked with applicant's existing authority, so as to permit a through service by applicant, from, to, or between points not included in the application. Because it is possible that other parties, who may have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITIONS

No. MC 60368 (Notice of Filing of Petition To Correct Certificate MC 60368, Application MC 60374 and Applications MC 89031 and MC 60368), filed November 18, 1971. Petitioner: RUFFALO TRUCKING SERVICE, INC., Post Office Box 148, Newark, NY. Petitioner's representative: Martin Martino, 1025 Connecticut Avenue NW., Washington, DC 20036. By petition filed November 18, 1971, petitioner states that by virtue of Rule 202 of the general rules of practice of the Interstate Commerce Commission, it seeks to correct its certificate No. MC 60368 in applications MC 60374, MC 89031, and MC 60368. Petitioner states its present certificate reads as follows: "*General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes, from New York, N.Y., and points and places in New Jersey within 30 miles of Jersey City, N.J., to Newark, N.Y., and points and places within 35 miles of Newark. Canned goods and kraut in containers, over irregular routes, from Newark, N.Y., and points and places within 75 miles of Newark to Passaic, Hackensack, Hoboken, Elizabeth, Jersey City, Newark, Paterson, Perth Amboy, and New Brunswick, N.J., and New York, N.Y. From Newark, N.Y., to Easton, Williamsport, Milton, Sunbury, Harrisburg, Lancaster, Coatesville, and Philadelphia, Pa. Return, with no transportation for compensation except as otherwise authorized to the above-specified origin points.

"*Animal and poultry feed and shell and grit*, over irregular routes, from Newfield, N.J., to points in Steuben, Chemung, Tioga, Broome, Delaware, Otsego, Chenango, Cortland, Tompkin, Schuyler, Erie, Wyoming, Livingston, Yates, Ontario, Seneca, Cayuga, Herkimer, Oneida, Madison, Onondaga, Wayne, Monroe,

Genesee, Orleans, Niagara, Oswego, Jefferson, and Lewis Counties, N.Y.; *canned vegetables and fruit:* From Waterloo, N.Y. to points in Nassau and Westchester Counties, N.Y.; *sauerkraut,* in containers, from Seneca Castle, N.Y., to points in Nassau and Westchester Counties, N.Y.; *canned vegetables,* from Newark, N.Y., to points in Westchester County, N.Y. Irregular routes: *General commodities* (except those of unusual value, classes A and B explosives, livestock, commodities in bulk, and household goods as defined by the Commission, between points in Madison, Oneida, and Onondaga Counties, N.Y." Petitioner further states that a review of the transcript of proceedings in Docket No. MC 89031 supports the conclusion that the body of the report and recommended order of the Hearing Examiner was intended to and should have read as follows: "from Newark, N.Y., and points and places within 75 miles of Newark, N.Y., to Easton, Williamsport, Milton, Sunbury, Harrisburg, Lancaster, Coatesville, and Philadelphia, Pa." Petitioner further states that the various hearings, consolidations and testimony adduced in these proceedings shortly after the Motor Carrier Act became effective *present a picture of confusion, and at this late date for reexamination of the facts.* By the instant petition, Petitioner requests its Certificate MC 60868 be corrected to read as follows: "Public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce of canned goods and kraut in containers, from Newark, N.Y., and points within 75 miles thereof, to Easton, Williamsport, Milton, Sunbury, Harrisburg, Lancaster, Coatesville, and Philadelphia, Pa., with no transportation for compensation on return except as otherwise authorized." Any interested persons desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 129229 and MC 129229 (Sub-No. 1) (Notice of Filing of Petition To Add Name of Shipper), filed November 22, 1971. Petitioner: P & N TRUCKING CO., INC., 4010 Dellane, North Bergen, NJ 07047. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner holds authority in No. MC 129229, as follows: Irregular routes: (1) Trichlorethylene and perchlorethylene, liquid in bulk; (a) from piers in New York Harbor, N.Y., as defined by the Commission, to points in Connecticut, Massachusetts, Rhode Island, New Jersey, New York, Pennsylvania, Delaware, and Maryland; (b) from Philadelphia, Pa., piers to points in Pennsylvania; and (c) from Baltimore, Md., piers to points in Maryland. (2) Chemicals (except in bulk), aluminum sheets, steel sheets, rods, coils, and ingots; (a) from piers in New York Harbor, N.Y., as defined by the Commission, to points in Connecticut, New Jersey, New York, Pennsylvania, Delaware, Maryland, Chicopee Falls, Mass., and Providence, R.I.; (b) from Philadelphia, Pa., piers to points in Pennsylvania; and (c) from Baltimore, Md., piers to points in Maryland, restricted to shipments in (1) and (2) above having prior movement by water and further restricted to traffic moving under a contract with International Selling Corp., of New York, N.Y., No. MC 129229 Sub 1, as follows: *Lead and zinc ingots, copper wire and sheets,* (a) from New York, N.Y., and points in the commercial zone thereof as defined by the Commission, to Chicopee Falls, Mass., and Providence, R.I., and points in Connecticut, New Jersey, New York, Pennsylvania, Delaware, and Maryland, with no transportation for compensation on return except as otherwise authorized; (b) from Philadelphia, Pa., to points in Pennsylvania, with no transportation for compensation on return except as otherwise authorized; (c) from Baltimore, Md., to points in Maryland, with no transportation for compensation on return except as otherwise authorized. Restriction: The service authorized herein is subject to the following conditions: The service authorized herein is restricted to shipments having a prior movement by water in foreign commerce. The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contract with International Selling Corp. of New York, N.Y. By the instant petition, petitioner seeks to add the name of Rhodia, Inc., as an additional contracting shipper to both of the above-named permits. Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 133627 (Sub-No. 1) (Notice of Filing of Petition To Substitute Contracting Shipper and Add Origin Point of Grand Junction, Colo.), filed November 11, 1971. Petitioner: COMMON MARKET DISTRIBUTING CORPORATION, Phoenix, Ariz. Petitioner's representative: Donald E. Fernaays, 4114A North 20th Street, Phoenix, AZ 85016. Petitioner holds authority in No. MC 133627 Sub-No. 1, over irregular routes, transporting: *Vitrified clay pipe, cast iron manhole frames, covers and steps, and sewer accessories,* from Pueblo, Colo., to points in Arizona, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are subject to the following conditions: Carrier shall conduct separately its contract carrier operation and its other business activities. Carrier shall conduct separate accounts and records therefor. Carrier shall not transport property as both a private and contract carrier in the same vehicle at the same time. The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with R. L. Coburn Co., Inc. By the instant petition, petitioner seeks to modify its permit by substituting T. R. Rutilla Co., Inc., as the contracting shipper in lieu of R. L. Coburn Co., Inc., and that the origin point of Grand Junction, Colo., be added. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 19157 and No. MC 19157 (Sub-No. 9) (Notice of Filing of Petition for Waiver of Rule 101(e), Reopening Reconsideration, and Modification of Certificates), filed November 30, 1971. Petitioner: McCORMACKS HIGHWAY TRANSPORTATION, INC., 151 Erie Boulevard, Schenectady, NY 12305. Petitioner's representative: Anthony C. Vance, Suite 501, 1111 E Street NW., Washington, DC 20004. Petitioner states it was granted "grandfather" authority in its lead certificate MC 19157. Petitioner states its lead authority is irregular route, motor common carrier authority, and reads as follows, in relevant part: "electrical equipment, between Schenectady, N.Y., on the one hand, and, on the other, points in Connecticut, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Vermont, Virginia, and the District of Columbia". Petitioner further states it's Sub 9 authority is motor common carrier authority, and reads as follows, in relevant part: "electrical equipment, between Schenectady, N.Y., on the one hand, and, on the other, points in Maine, New Hampshire, Rhode Island, Delaware, North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Florida, Louisiana, West Virginia, Mississippi, Michigan, and Wisconsin". Petitioner states that it was issued "grandfather" authority which did not fully encompass all of the commodities which were transported on and before the "critical" grandfather date, and thereafter. Moreover, the "grandfather" and Sub 9 authority issued to petitioner (electrical equipment) was thought to encompass a scope of commodity transportation broader than that which has recently been indicated to petitioner, among other reasons.

By the instant petition, petitioner requests its lead certificate be modified to read as follows: *"electrical equipment, appliances, and parts, pipe, and commodities the transportation of which because of size or weight require the use of special equipment,* over irregular routes, between Schenectady, N.Y., on the one hand, and, on the other, points on Connecticut, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Vermont, Virginia, and the District of Columbia." Petitioner further requests that its Sub 9 certificate be modified to real as follows: *"electrical equipment, appliances, and parts, and commodities the transportation of which because of size or weight require the use of special equipment,* over irregular routes, between Schenectady, N.Y., on the one hand, and on the other, points in Maine, New Hampshire, Rhode Island, Delaware, North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Florida, Louisiana, West Virginia,

Mississippi, Michigan, and Wisconsin. Petitioner further states that if it is presently authorized to provide all of the service performed during the "grandfather" period or dealt in by the supporter to its Sub 9 certificate, then this petition may be dismissed; otherwise, petitioner requests the modification stated above. Any interested person or persons desiring to participate and to be heard in the matter may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 124373 (Sub-No. 7) (Notice of Filing of Petition To Add Name of Shipper to Present Operating Authority), filed November 24, 1971. Petitioner: NELMAR TRUCKING CO., a corporation, Perth Amboy, N.J. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner states it holds authority in its permit No. MC 124373 (Sub-No. 7) which authorizes operations as a motor contract carrier, over irregular routes, in the transportation of: "Beverages in containers, and beverage preparations, other than malt, and equipment, materials and supplies, used in the manufacture and sale of beverages, between points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Virginia, District of Columbia, Vermont, West Virginia, North Carolina, and Kentucky, under a continuing contract with Custom Canners of Baltimore, Inc., and Yoo-Hoo Beverages Co., of Carlstadt, N.J." By the instant petition, petitioner seeks to add the name of Royal Crown Cola Co., as a contracting shipper. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 107460 (Sub-No. 8 and Sub-No. 22) (Notice of Filing of Petition for Modification of Permit), filed December 8, 1971. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goss Road, Lancaster, PA 17601. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Petitioner holds authority in No. MC 107460 (Sub-No. 8) the part here pertinent, to transport, over irregular routes, (A) *Agricultural machinery and implements, and parts and accessories* for said commodities, moving in connection with shipments of such commodities, from the plantsite of the Sperry Rand Corp., New Holland Division, at Belleville, Pa., to points in North Carolina and South Carolina, with no transportation for compensation on return except as otherwise authorized. Restriction: The service authorized in the paragraph immediately above is restricted to shipments on which stopping in transit for partial unloading will be performed at authorized points. (B) As to Sub 22 the pertinent restriction reads as follows: "Irregular routes: *Agricultural machinery and implements, and parts and accessories.* From points in Ohio, Illinois, Indiana, to the plantsite of Sperry Rand Corp., New Holland Division, at Belleville, Pa., with no transportation for compensation on return except as otherwise authorized.

Restriction: The service authorized in the paragraph immediately above is restricted to shipments on which stopping in transit for partial unloading would be performed at the New Holland, Pa., Mountville, Pa., or Intercourse, Pa., plants of the shipper." and "*Accessories, parts and supplies and materials* used in the manufacture, repair and assembly of agricultural machinery, implements, and component parts (except in bulk). From points in Ohio, Illinois, Indiana, and Michigan to the plantsite of Sperry Rand Corp., New Holland Division, at Belleville, Pa. Restriction: The service authorized in the paragraph immediately above is restricted to shipments on which stopping in transit for partial unloading will be performed at the New Holland, Pa., Mountville, Pa., or Intercourse, Pa., plants of the shipper." By the instant petition, petitioner seeks to modify the above-named permits so as to remove the restrictions. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 11207 (Sub-No. 314), filed November 22, 1971. Applicant: DEATON, INC., 317 Avenue W, Post Office Box 938, Birmingham, AL 35201. Applicant's representative: A. Alvis Layne, 915 Pennsylvania Building, Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Birmingham, Ala., and points within 6 miles of Birmingham, on the one hand, and, on the other, New Orleans, La., and points in Mississippi, restricted against the transportation of traffic interlined or interchanged to, from, or with other carriers at Birmingham, Ala., or points within 65 miles of Birmingham. NOTE: This application is a matter directly related to MC-F-11305, published in the FEDERAL REGISTER issue of September 15, 1971, wherein applicant seeks to convert to irregular routes the regular-route, general commodity authority it proposes to retain following consummation of MC-F-11305. Applicant also proposes to tack the authority sought with its existing specified commodity, irregular-route authority wherever feasible. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 59856 (Sub-No. 44), filed October 29, 1971. Applicant: SALT CREEK FREIGHTWAYS, a corporation, 3333 West Yellowstone, Casper, WY 82601. Applicant's representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, household goods as defined by the Commission, commodities which because of size or weight require special equipment, and articles of unusual value), from Gillette, Wyo., over Interstate Highway 90 to Spearfish, S. Dak., thence over U.S. Highway 85 to Belle Fourche, S. Dak., and return over the same routes, serving all intermediate points on said highways, and serving points in Crook County, Wyo., and Butte and Lawrence Counties, S. Dak., as off-route points. NOTE: The instant application is a matter directly related to MC-F-11349, published in the FEDERAL REGISTER issue of November 24, 1971. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 120280 (Sub-No. 2), filed December 6, 1971. Applicant: STATE MOTOR LINES, INC., Post Office Drawer 4187, Longview Station, Hickory, NC 28601. Applicant's representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street, NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those requiring special equipment), between points in North Carolina east of Transylvania, Haywood, Madison, Yancy, Mitchell, Avery, Watauga, Ashe, and Alleghany Counties, and west of Onslow, Jones, Carteret, Pamlico, Beaufort, Washington, Chowan, and Gates Counties, N.C. NOTE: Applicant holds a certificate of registration in No. MC 120280 (Sub-No. 1). The purpose of this application is to seek a certificate of public convenience and necessity in lieu thereof. The instant application is a matter directly related to MC-F-11394, published in the FEDERAL REGISTER issue of December 15, 1971. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Hickory, N.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11393. Application under section 5(1) of the Interstate Commerce Act for approval of an agreement between common carriers for the pooling of traffic. Applicants: SUMAS-EVERSON

AUTO FREIGHT, INC., Everson, Wash. (MC–69626), and O.N.C. MOTOR FREIGHT SYSTEM, 2800 West Bayshore Road, Palo Alto, CA 94303 (MC–71459) seeks to enter into an agreement for the pooling of traffic consisting of general commodities moving in interstate commerce between certain specified points in Washington. Attorney: Jack R. Turney, Jr., 2001 Massachusetts Avenue NW., Washington, D.C. 20036. SUMAS–EVERSON AUTO FREIGHT INC., is authorized to operate as a common carrier in Washington.

No. MC–F–11400. Application under section 5(1) of the Interstate Commerce Act for approval of an agreement between common carriers for the pooling of traffic. Applicants: F & M TRANSFER CO., 8 South First Avenue, Yakima, WA 98902 (MC–76470), and O.N.C. MOTOR FREIGHT SYSTEM, 2800 West Bayshore Road, Palo Alto, CA 94303 (MC–71459), seeks to enter into an agreement for the pooling of traffic consisting of general commodities moving in interstate commerce between certain specified points in Washington. Attorney: Jack R. Turney, Jr., 2001 Massachusetts Avenue NW., Washington, DC 20036. F & M TRANSFER CO., is authorized to operate as a common carrier in Washington.

No. MC–F–11401. Authority sought for purchase by ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Springfield, MO 65804, of a portion of the operating rights of THE MANFREDI MOTOR TRANSIT COMPANY, Route 87, Newbury, Ohio 44067, and for acquisition by HENRY J. ERICKSON, JOHN H. ERICKSON, JOSEPHINE ERICKSON, and ALF ERICKSON, all also of Springfield, Mo., of control of such rights through the purchase. Applicants' attorney: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: *Liquid concrete admixtures,* in bulk, in tank vehicles, as a *common carrier,* over irregular routes, from Springfield, Mo., to points in the United States, except points in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Vendee is authorized to operate as a *common carrier* in all States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a (b).

No. MC–F–11402. Authority sought for purchase by CONTINENTAL VAN LINES, INC., 891 Broadway, Seaside, CA 93940, of a portion of the operating rights and property of ELMER L. SIMS, G. GRANT SIMS AND ELMER L. SIMS (TRUSTEE FOR SIMS FAMILY), doing business as SALT LAKE TRANSFER CO., 35 South Fifth West, Salt Lake City, UT 84101, and for acquisition by NORMAN E. WILEY, 325 Elder Avenue, Seaside, CA 93950 and J. VERNON MYRES, 779 Anita Street, Chula Vista, CA 92011, of control of such rights and property through the purchase. Applicants' attorney: John Paul Fischer, 140 Montgomery Street, San Francisco, CA 94104. Operating rights sought to be transferred: *Household goods,* as defined by the Commission, as a *common carrier* over irregular routes, between points in Utah, on the one hand, and, on the other, points in Utah, and Idaho, those in Nevada east of a line extending north and south through McDermitt, Nev., including Winemucca, Nev., and those in Wyoming west of the Continental Divide, between points in Utah, Colorado, and Montana, between points in Utah, Wyoming, Idaho, Montana, Arizona and those in Nevada other than Nye, Esmeralda, and Mineral Counties. Vendee is authorized to operate as a *common carrier* in Nevada, California, and Oregon. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11403. Authority sought for purchase by PRESTON TRUCKING COMPANY, INC., 151 Easton Boulevard, Preston, MD 21655, of the operating right and property of AMERICAN TRANSFER COMPANY, INC., 1112 Race Street, Baltimore, MD 21230, and for acquisition by A. T. BLADES, T. E. FLETCHER, JR., A. F. SISK, JR., J. DALLAS BLADES, all of Preston, Md. 21655, of control of such rights and property through the purchase. Applicants' attorney: William J. Little, Suite 414, The Blaustein Building, 1 North Charles Street, Baltimore, MD 21201. Operating rights sought to be transferred: *General commodities,* excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Baltimore, Md., and Washington D.C., serving no intermediate points, between Baltimore, Md., and Point Lookout, Md., serving all intermediate points; and off-route points in St. Marys and Charles Counties, Md., and those in Prince Georges County, Md., on and south of Maryland Highway 4, between Washington, D.C., and Annapolis and North Beach, Md., serving all intermediate points, and certain off-route points; *general commodities,* excepting among others, classes A and B explosives, household goods, and commodities in bulk, over irregular routes, from Baltimore, Md., to Richmond, Va., and points in that part of Maryland on and east of U.S. Highway 11, except those points on and east of U.S. Highway 1 and north of Baltimore, but not excepting Perryville and Perry Point, Md., between points in the Washington, D.C., commercial zone, as defined by the Commission in 3 M.C.C. 243, on the one hand, and, on the other, points in that part of Maryland bounded on the north by a line beginning at the Maryland-District of Columbia boundary line, and extending along Alternate U.S. Highway 1 to junction Maryland Highway 450, thence along Maryland Highway 450 to Chesapeake Bay; on the east by Chesapeake Bay; and on the west and south by the Potomac River, including points on the highway boundary specified. Vendee is authorized to operate as a *common carrier* in Maryland, New York, Virginia, Delaware, Pennsylvania, New Jersey, Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, Vermont, Ohio, West Virginia, North Carolina, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11404. Authority sought for continuance in control by SPACE CENTER, INCORPORATED, 444 Lafayette Road, St. Paul, MN 55101, of ST. PAUL TERMINAL WAREHOUSE COMPANY, INC., 444 Lafayette Road, St. Paul, MN 55101. Applicants' attorney: William S. Rosen, 630 Osborn Building, St. Paul, MN 55102. Operating rights sought to be controlled: In pending Docket No. MC–134429 Sub-3, covering the transportation of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment because of size or weight), between Cordova Siding (plantsite of Minnesota Mining & Manufacturing Co. near Cordova, Ill.), Ames and Knoxville, Iowa, Alexandria, Chemolite (Minnesota Mining & Manufacturing Co. plantsite at Cottage Grove), Fairmont, Hutchinson, Lindstrom, Mankato, New Ulm, Minneapolis, and Pine City, Minn., and Cumberland and Prairie Du Chien, Wis., restricted (1) to the transportation of shipments both originating at and destined to plantsites and storage facilities of the Minnesota Mining & Manufacturing Co.; and (2) against the transportation of shipments between Cumberland, Wis., on the one hand, and, on the other, Chemolite (Minnesota Mining & Manufacturing Co. plantsite at Cottage Grove, Minn.), and points in the Minneapolis-St. Paul, Minn., commercial zone as defined by the Commission, and certificate not yet issued. SPACE CENTER, INCORPORATED presently controls WITTE TRANSPORTATION COMPANY, a common carrier in MC–8964. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11405. Authority sought for purchase by GENSIMORE TRUCKING, INC., Post Office Box "L", Pleasant Gap, PA 16823, of the operating rights of OSCAR H. BYERLY, CLYDE R. BYERLY, and HUGH O. BYERLY, doing business as BYERLY'S SERVICE, REGISTERED, Dalmatia, Pa. 17017, and for acquisition by MAE GENSIMORE, HARRY GENSIMORE, DONALD GENSIMORE, all of Rural Delivery No. 1, Box 94, Tyrone, PA 16686 and EDWARD GENSIMORE, Post Office Box 176, Centre Hall, Pa. 16823, of control of such rights through the purchase. Applicants' attorney: Robert H. Griswold, Post Office Box 1166, 100 Pine Street, Harrisburg, PA 17108. Operating rights sought to be transferred: *Fertilizer,* as a *common carrier* over irregular routes, from Baltimore, Md., to points in Pennsylvania west of a line extending from the northern end of the Maryland-Delaware State line through Reading and Sayre, Pa., to the Pennsylvania-New York State line;

and *wastepaper*, from Baltimore, Md., to Biglersville, Pa. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Virginia, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18699 Filed 12-21-71;8:48 am]

[Notice 414]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 16, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 8973 (Sub-No. 23 TA), filed December 6, 1971. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th Street, North Bergen, NJ 07047. Mailing: Post Office Box 93, Ridgefield, NJ 07657. Applicant's representative: George A. Olsen, 60 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic articles, materials and supplies*, used in the manufacture of plastic articles (except bulk in tank vehicles), from the facilities of Colorite Plastics Co. at Ridgefield, N.J., to points in New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Ohio, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia; and (2) *plastic articles, materials and supplies*, used in the manufacture of plastic articles (except bulk in tank vehicles), from the above destination states to Ridgefield, N.J., for 180 days. Supporting shipper: Colorite Plastics Co., 101 Railroad Avenue, Ridgefield, NJ 07657. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 103993 (Sub-No. 680 TA), filed December 6, 1971. Applicant: MORGAN DRIVE AWAY, INC., 2800 West Lexington Avenue, Elkhart, IN 46514. Applicant's representative: Ralph H. Miller (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings and sections of buildings*, on undercarriages, from points in the United States east of the Mississippi River and Louisiana and Minnesota, for 180 days. Supporting shipper: Fleetwood Homes of Virginia, Inc., Post Office Box 100, Highway 40 West, R.F.D. 4, Rocky Mount, VA 24151. Send protests to: Acting District Supervisor John R. Ryden, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, IN 46802.

No. MC 112595 (Sub-No. 49 TA), filed December 6, 1971. Applicant: FORD BROTHERS, INC., Post Office Box 727, 510 Riverside Drive, Coal Grove 45, Ironton, OH 45638. Applicant's representative: Walter S. Dall (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcinated coke*, in bulk, in tank or hopper type vehicles, from Gary, Ind., to Lancaster, Ohio, for 180 days. Supporting shipper: The Arcair Co., Post Office Box 406, North Memorial Drive, Lancaster, OH 43130, Attention: F. A. Moler, Jr., Purchasing Agent. Send protests to: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

No. MC 114106 (Sub-No. 90 TA), filed December 6, 1971. Applicant: MAYBELLE TRANSPORT COMPANY, Post Office Box 849, 1820 South Main Street, Lexington, NC 27292. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products*, dry, in bulk, having a prior movement by rail (1) from Atlanta, Ga., to points in Georgia, Alabama, and Tennessee; and (2) from Lexington, N.C., to points in Tennessee, for 90 days. Supporting shippers: Anheuser-Busch, Inc., St. Louis, Mo. 63118; CPC International, Inc., International Plaza, Englewood Cliffs, N.J. 07632. Send protests to: Frank H. Wait, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 316 East Morehead, Suite 417, Charlotte, NC 28202.

No. MC 115524 (Sub-No. 16 TA), filed December 6, 1971. Applicant: BURSCH TRUCKING, INC., 415 Rankin Road NE., Albuquerque, NM 87107. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Resin and wax emulsion*, in shipper owned containers, for account of Wright Chemical Corp., from the plantsite of Wright Chemical Corp., Malvern, Ark., to southwest Forest Products Plant at Flagstaff, Ariz., for 150 days. Supporting shipper: Wright Chemical Corp., Post Office Box 237, Malvern, Ark. 72104. Send protests to: William R. Murdoch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

No. MC 117565 (Sub-No. 54 TA), filed December 6, 1971. Applicant: MOTOR SERVICE COMPANY, INC., Post Office Box 448, Route 3, Coshocton, OH 43812. Applicant's representative: John R. Hafner (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movement, from the plantsite and storage facilities of Magnolia Homes Manufacturing, Ohio City, Ohio, to points in Indiana, Illinois, Michigan, Kentucky, New York, Pennsylvania, and West Virginia, for 180 days. Supporting shipper: Magnolia Homes Manufacturing, Post Office Box 278, Ohio City, OH 45874. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 255 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 134050 (Sub-No. 3 TA), filed December 6, 1971. Applicant: J. M. FOSTER, Route 6, Box 247, Brookhaven, MS 39601. Applicant's representative: Donald B. Morrison, Post Office Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pressure treated wood products*, from the plantsite of Mississippi Wood Preserving Co., Brookhaven, Miss., to points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Missouri, Ohio, and Tennessee, for 150 days. Supporting shipper: Mississippi Wood Preserving Co., Brookhaven, Miss. 39601. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 212, 145 East Amite Building, Jackson, MS 39201.

No. MC 134599 (Sub-No. 34 TA), filed December 6, 1971. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, Post Office Box 748, Office: 265 West 27th South 84115, Salt Lake City, UT 84110. Applicant's representative: Richard Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery and advertising and display materials*, when moving in the same vehicle at the same time with candy and confectionery, under a continuing contract with Hollywood Brands, from Ashley and Centralia, Ill., to points in Wisconsin, Indiana, Michigan, and Ohio, for 180 days. Supporting shipper: Hollywood Brands, Centralia, Ill. 62801 (E. Harry Endroll, Traffic Manager). Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau

of Operations, 5239 Federal Building, Salt Lake City, Utah 84111.

No. MC 134868 (Sub-No. 2 TA), filed December 6, 1971. Applicant: COIN DEVICES CORP., 68 Broad Street, Elizabeth, NJ 07201. Applicant's representative: Robert B. Pepper, 174 Brower Avenue, Edison, NJ 08817. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coins, currency and checks* under a continuing contract with Rickel Bros., Inc., between Elizabeth, N.J., and Rickel Bros. store at Monsey, N.Y., for 180 days. Supporting shipper: Rickel Bros., Inc., 1760–64 New Durham Road, South Plainfield, NJ 07080. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 136083 (Sub-No. 2 TA), filed December 6, 1971. Applicant: FONT TRANSPORT CORP., 234 Southlawn Avenue, Central Islip, NY 11722. Applicant's representative: Arthur J. Piken, Suite 1515, 1 Lefrak City Plaza, Flushing, NY 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural and architectural tubing*, from the facilities of American Flagpole, Division of Kearney-National, Inc., at East Setauket, N.Y., and the pier and wharves in that part of the New York, N.Y., commercial zone as defined in the 5th Supplemental Report in *Commercial Zones and Terminal Areas*, 53–M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act (The "exempt" zone) on the one hand, and, on the other, points in Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia, for 180 days. Supporting shipper: American Flagpole-Division, of Kearney-National Inc., Post Office Box C, East Setauket, Long Island, NY 11733. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 136156 TA (Correction), filed November 15, 1971, published FEDERAL REGISTER December 1, 1971, corrected and republished in part as corrected this issue. Applicant: TODD NORTH AMERICAN, INC., 9 Derwood Circle, Rockville, MD 20850. Applicant's representative: Thomas R. Kingsley, 1819 H Street NW., Washington, DC 20006. NOTE: The purpose of this partial republication is to include Arlington County, Va., to the territorial description, which was inadvertently omitted in previous publication. The rest of the application remains the same.

No. MC 136213 TA, filed December 6, 1971. Applicant: MIDCO DISTRIBUTING, INC., 508 South Third Street, Goshen, IN 46526. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, supplies, parts, appliances, and components*, used in the production, manufacture, assembly, installation and distribution of mobile and modular homes and recreational vehicles, (1) from Elkhart, Breman, Kendallville, LaGrange, and Bristol, Ind., Evanston, Ill., Detroit, Royal Oak, Oxford, and Orchard Lake, Mich., Archibald and Cleveland, Ohio; Caldwell, Idaho; Van Alystone, Tex., and Plains, Ga., to Goshen, Ind.; and (2) from Goshen, Ind., to Van Alystone, Tex., Thomasville, Ga., Canastota, N.Y.; Payette, Idaho; Dryden, Mich., and Breman and Elkhart, Ind., for 180 days. Supporting shipper: Champion Home Builders Co., 5573 East North Street, Dryden, Mich. 48428 (Jack W. Fuller, Director of Safety and Compliance). Send protests to: Acting District Supervisor John E. Ryden, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, IN 46802.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18700 Filed 12-21-71;8:48 am]

[Notice 415]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 17, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 16672 (Sub-No. 17 TA), filed December 9, 1971. Applicant: McGUIRE LUMBER AND SUPPLY, INC., Wyllieburg, Va. 23976. Applicant's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* (except plywood veneer), from Red Oak, Va., and points within 5 miles thereof, to points in Delaware, Maryland, Pennsylvania, New York, New Jersey, Connecticut, Virginia, West Virginia, Ohio, North Carolina, and the District of Columbia, except to Pittsburgh, Pa., and points in Pennsylvania, Ohio, and West Virginia within 75 miles of Pittsburgh, Pa., for 180 days. Supporting shipper: J. C. Morgan & Sons, Inc., Red Oak, Va. Send protests to: Clatin M. Harmon, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, VA 24011.

No. MC 35072 (Sub-No. 8 TA), filed December 8, 1971. Applicant: EDWIN L. ELLOR & SON, INC., 29 Mountain Boulevard, Warren, NJ 07060. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hydrants, castings, valves, and machinery* and (2) *equipment, materials, and supplies* used or useful in the manufacture, sale, and installation thereof, except commodities in bulk, between the plantsite of United States Pipe & Foundry Co. Burlington, N.J., on the one hand, and, on the other, points in New Jersey, New York, Connecticut, Massachusetts, Manchester, N.H., Rhode Island, Pennsylvania, Delaware, Maryland, and the District of Columbia, under a continuing contract with United States Pipe and Foundry Co. of Burlington, N.J., for 180 days. Supporting shipper: United States Pipe & Foundry Co., Burlington, N.J. 08016. Send protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 108375 (Sub-No. 31 TA), filed December 8, 1971. Applicant: LEROY L. WADE & SON, INC., 1615 Izard Street, Omaha, NE 68102. Applicant's representative: Donald L. Stern, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used automobiles*, in truckaway service, from points in Kansas to Omaha, Nebr., for 180 days. Supporting shipper: Auction Recon, Inc., 7425 Dodge Street, Omaha, NE (Harvey Wine). Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 111170 (Sub-No. 178 TA), filed December 7, 1971. Applicant: WHEELING PIPE LINE, INC., Post Office Box

1718, 2811 North West Avenue, El Dorado, AR 71730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid formaldehyde and urea formaldehyde resin*, in bulk, from Malvern, Ark., and points within 8 miles to points in Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, for 180 days. Supporting shipper: Wright Chemical Corp., Post Office Box 237, Malvern, AR 72104. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 112014 (Sub-No. 13 TA), filed December 9, 1971. Applicant: SKAGIT VALLEY TRUCKING CO., INC., Post Office Box 400, 1417 McLean Road, Mt. Vernon, WA 98273. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, WA 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Seattle, Wash., to ports of entry on the international boundary line between the United States and Canada located at or near Blaine, or Sumas, Wash., for 180 days. Supporting shipper: United Fruit Co., a division of United Brands Co., 2666 26th Avenue SW., Seattle, WA 98106. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 112801 (Sub-No. 131 TA), filed December 8, 1971. Applicant: TRANSPORT SERVICE CO., Post Office Box 50272, 5100 West 41st Street, Chicago, IL 60650. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Toilet preparations*, in bulk, from the plantsite of Lehn & Fink Products Co., at Lincoln, Ill., to Selma, Ala., for 150 days. Supporting Shipper: Ambrose A. Mee, traffic manager, Lehn & Fink Products Co., Lincoln, Ill. Send protests to: Robert G. Anderson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 118056 (Sub-No. 4 TA), filed December 9, 1971. Applicant: ANGELO DEL SORDO, doing business as, DEL'S TRANSPORTATION COMPANY, 7 Summer Street, Fairhaven, MA 02719. Applicant's representative: Angelo Del Sordo (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Albany, N.Y., and Baltimore, Md., to Providence, R.I., for 150 days. Supporting shipper: Yellogold Banana Co., 6–8 Harris Avenue, Produce Building, Providence, RI 02903. Send protests to: Gerald H. Curry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 187 Westminster Street, Providence, RI 02903.

No. MC 123115 (Sub-No. 5 TA), filed December 9, 1971. Applicant: BEN PACKER, doing business as, PACKER TRANSPORTATION CO., 465 South Rock Boulevard, Sparks, NV 89431. Applicant's representative: Royal A. Stewart, 160 North Arlington, Reno, NV 89505. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and boards or sheets flat, hardboard and particle board*, consisting of sawdust or ground wood with added resin binder, not to exceed 10 percent by weight (compressed) and plywood, from Klamath Falls and Bly, Oreg., to points in California, for 180 days. Supporting shipper: Weyerhauser Co., Tacoma, Wash. 98401. Send protests to: District Supervisor Wm. E. Murphy, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, San Francisco, CA 94102.

No. MC 124111 (Sub-No. 34 TA), filed December 9, 1971. OHIO EASTERN December 9, 1971. Applicant: OHIO EASTERN EXPRESS, INC., Post Office Box 2297, 302 West Perkins Avenue, Sandusky, OH 44870. Applicant's representative: Harvey A. Rosenzweig, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas and agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Act when transported in mixed loads with bananas, from Albany, N.Y., and its commercial zone, to points in New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, West Virginia, and Louisville, Ky., and its commercial zone, for 180 days. Supporting shipper: Chiquita Brands, Inc., 1250 Broadway, New York, NY 10001. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5234 Federal Office Building, 235 Summit Street, Toledo, OH 43604.

No. MC 126461 (Sub-No. 3 TA), filed December 9, 1971. Applicant: PACIFIC FREIGHTWAYS, LTD., 20387–86th Avenue Rural Route 4, Langley, BC, Canada. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, between the international boundary line between the United States and Canada, on the one hand, and, on the other, points in Oregon and Washington, restricted to service to carriers holding certificates or permits from the Interstate Commerce Commission and to freight loaded into or on such carriers' trailers and moving on that carrier's bill of lading, for 180 days. Supporting shippers: Commercial Truck Co. Ltd., 230 Brunette Street, New Westminster, BC; Coodman Motor Transport Co., Ltd., 5650 Kingston Road, Vancouver 8, BC; Mexi-Cana Reefer Services Ltd., 880 Malkin Avenue, Vancouver 3, BC; Hi-Way Transport Ltd., 653 Alderson Avenue, Coquitlam, BC. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 127274 (Sub-No. 36 TA), filed December 9, 1971. Applicant: SHERWOOD TRUCKING, INC., 1517 Hoyt Avenue, Post Office Box 2139, Muncie, IN 47302. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hardwood veneer, domestic, and hardwood plywood*, from Suffolk, Va., to Atlanta, Augusta, and Savannah, Ga.; Chicago, Ill.; Fort Wayne and Indianapolis, Ind.; Louisville, Ky.; Baltimore, Md.; Detroit and Grand Rapids, Mich.; Asheville, Charlotte, Greensboro, and Raleigh, N.C.; Cincinnati, Cleveland, Columbus, and Toledo, Ohio; Philadelphia and Pittsburgh, Pa.; Charleston and Columbia, S.C.; Chattanooga, Knoxville, Memphis, and Nashville, Tenn.; and Madison and Milwaukee, Wis., for 180 days. Supporting shipper: Day Companies, Post Office Box 17409, White Station Tower, Memphis, TN 38117. Send protests to: Acting District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, Room 204, 345 West Wayne Street, Fort Wayne, IN 46802.

No. MC 127844 (Sub-No. 18 TA), filed December 9, 1971. Applicant: L. B. BARNHILL & I. S. JOHNSON, JR., a partnership, doing business as B & J TRANSPORTATION, Post Office Box 334, Sumter, SC 29150. Applicant's representative: I. S. Johnson, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Nichols, S.C., to points in New Jersey, New York, and Pennsylvania, for 180 days. Supporting shipper: Unagusta Manufacturing Corp., Hazelwood, N.C. 28738. Send protests to: E. E. Strotheld, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 300 Columbia Building, 1200 Main Street, Columbia, SC 29201.

No. MC 129352 (Sub-No. 9 TA), filed December 9, 1971. Applicant: CREAGER TRUCKING CO., INC., 2201 Sixth Avenue South, Seattle, WA 98134. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Wapato, Wash., to points in Califonia, for 180 days. Supporting shipper: Northwest Hardwoods, Inc., American Bank Building, Portland, Oreg. 97205. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building Seattle, Wash. 98101.

No. MC 133724 (Sub-No. 2 TA), filed December 8, 1971. Applicant: JEAN D. MARKS, doing business as JEAN MARKS, Post Office Box 76, Goshen, OR 97401. Applicant's representative: Jean

D. Marks (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shakes and shingles*, from points in Tillamook County, Oreg., to points in California, for 180 days. Supporting shipper: Hodgdon Shake & Shingle, 385 Hodgdon Road, Tillamook, OR 97141. Send protests to: A. E. Odoms, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, Portland, OR 97204.

No. MC 134073 (Sub-No. 13 TA), filed December 9, 1971. Applicant: GENOVA TRANSPORT, INC., 484 Clayton Road, Williamstown, NJ 08094. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Philadelphia, Pa., to points in New Jersey, New York, Connecticut, Massachusetts, and Rhode Island, under contract with Mrs. Paul's Kitchens, Inc., for 150 days. Supporting shipper: Mrs. Paul's Kitchens, Inc., 5830 Henry Avenue, Philadelphia, PA 19128. Send protests to: Richard M. Regan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 135608 (Sub-No. 1 TA), filed December 9, 1971. Applicant: INMAN TRANSPORT, INC., Post Office Box 666, Inman, SC 29349. Applicant's representative: Edward G. Villalon, 1023 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned goods, foodstuffs and beverage drinks*, in cans and glass bottles, from Augusta, Ga., and Inman, S.C., to points in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia; (2) *canned goods and foodstuffs*, from the plantsites and warehouses of RJR Foods, Inc., located at Baltimore, Md.; Cambridge, Md.; and Harvey, La.; and from RJR Foods, Inc.'s Copacker's plant located at Humboldt, Tenn., to Inman, S.C.; (3) *empty cans and can lids* (including return of empty pallets), from Auburndale, Tampa, Miami, Winter Garden, Bartow, and Orlando, Fla.; Atlanta, Ga.; Indianapolis, Ind.; Baltimore, Md.; Greensboro, N.C.; Cincinnati, Ohio; Spartanburg, S.C.; Philadelphia, Pa.; and North Bergen, N.J.; to Augusta, Ga., and Inman, S.C.; (4) *labels and fruit juice concentrate*, from the plantsite of RJR Foods, Inc., located at Baltimore, Md., to Inman, S.C.; (5) *empty beverage glass bottles*, in fiberboard containers (including return of empty pallets), from Montgomery, Ala.; Jacksonville, Lakeland, and Tampa, Fla.; Atlanta, Ga.; Asheville, Charlotte, Greensboro, and Henderson, N.C.; Columbia, Greenville, Laurens, and Spartanburg, S.C.; Chattanooga, Tenn.; and Fairmont and Huntington, W. Va., to Augusta, Ga., and Inman, S.C.; (6) *caps, covers, or tops*, for glass bottles, in fiberboard containers, from Glassboro, N.J.; Columbia and Spartanburg, S.C.; Baltimore, Md.; and Atlanta, Ga.; to Augusta, Ga., and Inman, S.C.; and (7) *fiberboard boxes*, from Atlanta, Ga.; Charlotte, N.C.; Laurens and Newberry, S.C.; to Augusta, Ga.; and Inman, S.C.; for 180 days. Supporting shippers: London Dry, Ltd., Augusta, Ga.; RJR Foods, Inc., New York, N.Y. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 300 Columbia Building, 1200 Main Street, Columbia, SC.

No. MC 135759 (Sub-No. 2 TA), filed December 8, 1971. Applicant: K & C TRANSPORTATION, INC., Ninth Floor, Loyalty Building, Portland, OR 97204. Applicant's representative: Carol A. Hewitt (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Books, periodicals, and library carts*, between Blackwood, N.J., on the one hand, and, on the other, points in Kings, Nassau, New York, Bronx, Queens, Richmond, Rockland, and Suffolk Counties, N.Y.; Luzerne, Delaware, Philadelphia, and Lehigh Counties, Pa.; Suffolk, and Middlesex Counties, Mass.; Burlington, Mercer, Middlesex, Somerset, Hudson, Essex, Passaic, Bergen, and Morris Counties, N.J., Baltimore, Carroll, Anne Arundel and Clarke Counties, Md., New Haven County, Conn., and in the State of Delaware; (2) *books, periodicals, and library carts*, between Beaverton, Oreg., Denver, Colo., Zion, Ill., Marion, Ohio, and Blackwood, N.J., for 180 days. Supporting shipper: Richard Abel & Co., Inc., Post Office Box 4245, Portland, OR 97208. Send protests to: District Supervisor W. J. Heutig, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR 97204.

No. MC 136137 (Sub-No. 1 TA), filed December 9, 1971. Applicant: JAMES D. JOHNSON, doing business as JOHNSON MOVING & STORAGE, No. 2 Maysville Avenue, Mount Sterling, KY 40353. Applicant's representative: Robert H. Kinker, 711 McClure Building, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Bath, Bracken, Breathitt, Clay, Fleming, Floyd, Grant, Jackson, Johnson, Knott, Laurel, Lee, Leslie, Lincoln, Magoffin, Mason, Menifee, Morgan, Nicholas, Owen, Owsley, Pendleton, Perry, Pulaski, Robertson, Rockcastle, Rowan, and Wolfe Counties, Ky. Restriction: Said operations are restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized. Said operations are restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic, for 180 days. Supporting shipper: Curtis L. Wagner, Jr., Chief, Regulatory Law Office, Department of the Army, Office of the Judge Advocate General, Washington, D.C. 20310. Send protests to: R. W. Schneiter, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 222 Bakhaus Building, 1500 West Main Street, Lexington, KY 40505.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18701 Filed 12-21-71;8:49 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 17, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42320—*Analine oil to East St. Louis, Ill.* Filed by M. B. Hart, Jr., agent (No. A6289), for interested rail carriers. Rate on analine oil in tank carloads from Geismar, La. to East St. Louis, Ill.

Grounds for relief—Market competition.

Tariff—Supplement 160 to Southern Freight Association, agent, tariff ICC S-800. Rate is published to become effective January 20, 1972.

FSA No. 42321—*Gypsum wallboard to points in Wyoming.* Filed by Southwestern Freight Bureau, agent (No. B-276), for interested rail carriers. Rates on gypsum wallboard, in carloads, from West Memphis, Ark., to points in Wyoming, as named in the application.

Grounds for relief—Market competition.

Tariff—Supplement 3 to Southwestern Freight Bureau, agent, tariff ICC 4984. Rates are published to become effective January 17, 1972.

FSA No. 42322—*Asphalt to points in western trunkline and southwestern territories.* Filed by Southwestern Freight Bureau, agent (No. B-271), for interested rail carriers. Rates on asphalt, in tank carloads, as described in the application, from Sheerin, Tex. to points in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and New Mexico.

Grounds for relief—Market competition and rate relationship.

Tariff—Supplement 95 to Southwestern Freight Bureau, agent, tariff ICC 4714. Rates are published to become effective January 18, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-18702 Filed 12-21-71;8:49 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

DECEMBER 17, 1971.

The following applications for motor common carrier authority to operate in

intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. A 53048 filed December 8, 1971. Applicant: SAMJO, INC., doing business as SMISER FREIGHT SERVICE, 8610 Atlantic Boulevard, South Gate, CA 90280. Applicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, with the usual exceptions: (B) Between: (1) all points and places presently authorized to be served via the following highways for *operating convenience only, and without service to points and places located on said highways:* (a) U.S. Highway 101 between the northerly boundary of the Los Angeles Basin Territory, and Salinas, Calif.; (b) Interstate 5 between the junction with State Highway 99 north of Wheeler Ridge, Interstate 580 and the junction with the San Francisco Territory; (c) State Highway 152 between the junction with State Highway 99 and the junction with U.S. Highway 101; and (d) State Highway 46 between junction with State Highway 99 and its junction with U.S. Highway 101. (C) Between: (1) All points north of Fresno, on the one hand, and Sacramento, inclusive, on the other hand, via State Highway 99, with service to all points and places located on and within 10 miles laterally of the said highways. (2) All points and places on U.S. Highway 101 between Salinas and the San Francisco Territory, inclusive. (3) All points and places on State Highways 1 and 17, between Monterey and the San Francisco Territory, inclusive.

(D) Between: (1) All points on State Highway 99 between Madera and Marysville, inclusive, on the one hand, and, the said San Francisco Territory, on the other hand, via: Interstate Highways 5, 80, 205, 505, 580, and 680; U.S. Highway 50; and State Highways 4, 12, 20, 65, 99, 120, and 160, with service to all points and places located on and within 10 miles laterally of the said highways. (E) Between: (1) All points and places within the San Francisco Territory. (F) Extend: (1) Lateral service to all points and places located on all service routes 10 miles. Applicant proposes to establish through routes and rates between any and all points described in subparagraphs C through E inclusive, and between any and all points presently authorized to be served. Applicant proposes to use all available public highways between points proposed to be served as hereinabove mentioned, and within the cities and towns hereinabove proposed to be served and applicant proposes to use such streets and highways as may be necessary to serve consignors and consignees located within said cities and towns. Both intrastate and interstate authority sought.

HEARING: Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission of the State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

State Docket No. A 52729 filed June 30, 1971. Applicant: FRESNO BASS LAKE FREIGHT LINES, INC., 53 L Street, Fresno, CA 93721. Applicant's representative: Marshall A. Smith, Jr., 925 North Fulton Street, Fresno, CA 93728. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities;* (1) between Fresno and Wawona via State Highway No. 41; and also via Friant, Oneals, North Fork, and Bass Lake; and all intermediate points; (2) between Bass Lake and Wishon Powerhouse on the San Joaquin River, and all intermediate points (subject to Note 1); (3) service is authorized by diversion to and from South Fork and Indian Mission; (4) between Bass Lake and Colver Meadows and intermediate points (subject to Note 1); (5) between Auberry Road and Friant and intermediate points (subject to Note 1); (6) the main roads connecting the aforementioned routes and points located thereon; (7) between North Fork and Beasore Meadow, via South Fork, Hogue Ranch, Soda Springs, Logan Meadow (subject to Note 1); (8) between Long Meadow and Fullers Meadow, via Arnold Meadow, Forked Meadow, Logan Meadow, and Mammouth Pool (subject to Note 1); (9) between Soda Springs and Forked Meadow, via Placer Guard Station; (10) between Big Creek Power House No. 4 and Italian Bar via Dam No. 7 (subject to Note 1); (11) all intermediate and off-route points of Castle Peak and Lake Redinger (subject to Note 1); (12) traversing all unnumbered country roads between the above-named points (subject to Note 1);

Applicant proposes to add the following to their scope of operation: (13) Between Fresno and the area of General Grant Grove Section, prior to its annexation to Kings Canyon National Park in 1940, serving as intermediate points, Centerville, Minkler, Sears Corner, Squaw Valley, Dunlap, Miramonte, Pinehurst, and Sequia Lake over and along the following routes (subject to Note 2): Fresno (via Ventura Avenue) over State Highway No. 180 to Centerville; east on State Highway No. 180 to Minkler; east on State Highway Route No. 180 (formerly Squaw Valley Road) to Sears Corner; east on State Highway No. 180 to Squaw Valley; Squaw Valley to Dunlap over Dunlap Highway, Dunlap to Miramonte over Dunlap Highway and Sand Creek Road; Pinehurst to the area of General Grat Grove Section, prior to its annexation to Kings Canyon National Park in 1940, via Sequia Lake and return over Sand Creek Road; (14) Wilsonia and Hume Lake and intermediate points on a triweekly basis; (15) Hume Lake and Cedar Grove and intermediate points (subject to Note 1 and 3). NOTE 1—Transportation shall be on an on call basis. NOTE 2—Daily except Sunday. NOTE 3—Service between Hume Lake and Cedar Grove and intermediate points will be subject to minimum shipments of 8,000 pounds as to shipments originating or destined to points east of Barton. Both intrastate and interstate authority sought.

HEARING. Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission of the State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-18696 Filed 12-21-71;8:48 am]

CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

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WEDNESDAY, DECEMBER 22, 1971
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PART II

Section 1

(Section 2 Begins on Page 24593)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

REORGANIZATION OF TITLE

Title 24—HOUSING AND URBAN DEVELOPMENT

REORGANIZATION OF TITLE

Title 24 of the Code of Federal Regulations (formerly Housing and Housing Credit) is rearranged, under the title of "Housing and Urban Development", to reflect the current headquarters and field organization of the Department and to provide a chapter for the regulations of each program Assistant Secretary. In addition, the pertinent regulations in Title 44, Chapter VII are transferred to Title 24, and Chapter VII is vacated.

Only necessary editorial changes, such as correcting references to headquarters and field organization or deleting obsolete material, are made at this time. Substantive changes are not intended. However, the bylaws of the Government National Mortgage Corporation are being codified as a new Part 310. Many parts in which no changes are made are set forth in full in order to have a complete body of regulations available to the public. All amendments to these regulations are included in this republication through November 27, 1971.

The reorganization and redesignation of Department regulations in 24 CFR are effective December 22, 1971. Title 24, together with a table of redesignated parts, is set forth below in its entirety.

/s/ GEORGE ROMNEY,
Secretary of Housing and Urban Development.

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40	Standards for design, construction, and alteration of publicly owned residential structures.
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81	Regulations governing operations of the Federal National Mortgage Association.

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

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Appendix—List of Positions Subject to Subpart D.

AUTHORITY: The provisions of this Part 0 issued under 18 U.S.C. 201 through 209; E.O. 11222 of May 8, 1965, 30 F.R. 6469, 3 CFR 1965 Supp.; 5 CFR 735.104.

Subpart A—General Provisions

§ 0.735–101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by

citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Department's regulations prescribing standards of conduct and responsibilities, and governing statements of employment and financial interests for employees and special Government employees.

§ 0.735–102 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Employee" means an officer or employee of the Department, but does not include a special Government employee.

(c) "Special Government employee" means an officer or employee of the Department appointed to serve with or without compensation, for not more than 130 days during any period of 365 consecutive days, on a full-time, part-time, or intermittent basis, and who is retained, designated, appointed, or employed as a special Government employee under the provisions of section 202 of title 18 of the United States Code.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Outside employment" means all gainful employment other than the performance of official duties. It includes, but is not limited to, working for another employer, the management or operation of a private business for profit (including personally owned businesses, partnerships, corporations, and other business entities), and other self-employment.

§ 0.735–103 Notification to employees and special Government employees.

The provisions of this part and all revisions thereof shall be brought to the attention of and made available to:

(a) Each employee and special Government employee at the time of issuance and at least annually thereafter;

(b) Each new employee and special Government employee at the time of entrance on duty.

§ 0.735–104 Interpretation and advisory service.

(a) *Department counselor.* The General Counsel of the Department is designated Counselor for the Department and shall serve as the Department's designee to the Civil Service Commission on matters covered by this part. He shall be responsible for coordinating the Department's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to designated deputy counselors. He may form ad hoc committees to evaluate the effectiveness of the standards, or to consider any new or unusual question arising from their application.

(b) *Deputy counselors.* Such deputy counselors as may be required shall be designated by the Secretary or his designee from among the staff of the Office of the General Counsel to give authoritative advice and guidance to current and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this part.

§ 0.735–105 Reviewing statements and reporting conflicts of interests.

(a) Subpart D of this part and the appendix to this part identify the categories of positions and, as necessary, the specific positions in which the incumbent is required to submit a statement of employment and financial interests to an appropriate Department official for review.

(b) When a statement submitted under Subpart D of this part and the appendix to this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Government and when the conflict or appearance of conflict is not resolved by the Department Counselor, he shall report the information concerning the conflict or appearance of conflict to the Secretary.

(c) The employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

(d) If the resolution of the conflict or appearance of conflict contemplates or includes any of the remedial action indicated in § 0.735–106 with the exception of paragraph (b) (2), appropriate personnel officers of the Department shall be notified and shall participate in the determination of the action proposed to be effected.

§ 0.735–106 Disciplinary and other remedial action.

(a) A violation of this part by an employee or special Government employee may be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee or special Government employee provided by § 0.735–105, the Secretary decides that remedial action is required, he shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee or special Government employee of his conflicting interest; and unless otherwise provided divestiture is to be completed within 60 days after notice of a decision that a conflict exists.

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

(c) If any of the remedial action indicated in this section with the exception of paragraph (b) (2) of this section is contemplated, appropriate personnel officers of the Department shall be notified and shall participate in the determination of the action proposed to be effected.

Subpart B—Conduct and Responsibilities of Employees

§ 0.735–201 Basic principle.

(a) Each employee must realize that the Government's basic and controlling purpose in employing him is the public interest, rather than his private or personal interest, and that he can never have a right of tenure that transcends the public good. He can properly be a Government employee only as long as it remains in the public interest for him to be one. Public trust and confidence in the integrity of the Government are paramount.

(b) (1) This basic principle applies with special force and effect in the Department of Housing and Urban Development, which deals directly with important segments of the public, and whose success depends upon public trust and confidence in its actions. The official actions of the Department often have a direct bearing upon the financial and other interests of individuals, firms, and institutions with which it does business. Furthermore, the effective accomplishment of the Department's mission is significantly dependent upon a public image that engenders confidence in the Department's integrity. Accordingly, the avoidance of any involvement that tends to damage that image is a responsibility of exceptional importance for all employees who participate in or influence official operating determinations that affect the interests of those with whom the Department does business.

(2) If there is knowledge of an employee's involvement in or association with circumstances reasonably construed to reduce public confidence in the acts or determinations of the Department, such knowledge may be sufficient cause for the initiation of action adverse to the employee. Employees, therefore, are alerted to the gravity with which the Department will view any such involvement, especially if it has to do with conflicts of interest or the compromise of integrity—whether real or only apparent.

§ 0.735–202 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by the regulations in this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 0.735–203 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 0.735–204 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under Department orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

§ 0.735–204 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner;

(3) Activities that may be construed by the public to be the official acts of the Department;

(4) Activities that establish relationships or property interests that may result in a conflict between his private interests and his official duties; and

(5) Employment that may involve the use of information secured as a result of employment in the Department to the detriment of the Department or the public interest, or that may give preferential treatment to any person, corporation, public agency, or group.

(6) Engaging directly or indirectly in the purchase, sale or management of real estate, including the financing of realty transactions; except (i) the employee's residence, immediate past residence, vacation or retirement home, or (ii) realty transactions involving a moderate scale of investment properties which are not likely in the foreseeable future to be involved in a HUD program.

(7) Employment related to or similar to the substantive programs conducted by any part of the Department. This includes, but is not limited to, the broad fields of real estate, mortgage lending, property insurance, construction, construction financing, and land and real estate planning.

(8) Employment with any person, firm, or other private organization having business either directly or indirectly with the Department.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior approval of the appropriate deputy counselor before engaging in outside employment in the following categories:

(1) Employment in the same professional field as that of the individual's official position. However, an attorney in this Department may, in off-duty hours and consistent with his official responsibilities, participate, without compensation for his services, in a program to provide legal assistance and representation to poor persons. Such participation shall not include representation or assistance in any judicial matter or proceeding, whether Federal, State, or local, involving programs of this Department or in any other matter or proceeding in which the United States, including the District of Columbia, is a party or has a direct and substantial interest. Notice of intention to participate in such a program shall be given by the attorney in writing to his superior in such detail as that official shall require.

(2) Employment by State, local, or other governmental body.

(d) No full-time employee or part-time employee with a regularly scheduled tour of duty shall maintain a publicly listed place of business without the prior approval of the appropriate deputy counselor.

(e) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, Civil Service Commission regulations, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Secretary or his designee gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(1) Each employee including the Secretary, and including each full-time member of a committee, board, or commission appointed by the President, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information pursuant to the regulations in this part.

(2) An employee may use his name and title in connection with articles for publication which bear upon his work in the Department only if he obtains the approval of the appropriate deputy counselor.

(f) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational

and recreational, public service, or civic organization.

§ 0.735–205 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(3) Acquire securities issued by the Federal National Mortgage Association.

(4) Acquire ownership of stock or other interest in a rental project financed with an FHA insured mortgage as long as the insurance is in force.

(5) Acquire ownership of FHA debentures or certificates of claim.

(6) Acquire interest in a cooperative or condominium housing project financed under the National Housing Act if the interest is not for obtaining a home for himself or his family.

(7) Be an officer or director of any organization which is an FHA approved mortgagee or lending institution or which services mortgages or other securities for the Department. An employee may hold stock or shares in such organizations provided his official duties are such that the holding will not create or tend to create a conflict of interest. The prohibitions of this paragraph do not apply to Federal Credit Unions that have been approved as Title I lending institutions.

(8) Participate directly or indirectly in any real estate activities for speculative purposes as distinguished from bona fide investment purposes on a moderate scale. There is a presumption of speculation when the use of borrowed funds is involved on a continuing basis or in large sums or the income characteristic of an investment is disproportionate or absent.

(b) (1) No employee, including a special Government employee, may participate as such in any matter in which to his knowledge he, his spouse, minor child, organization in which he is serving as an officer, director, trustee, partner, or employee, or a partner has a financial interest. He must also not participate in any matter in which to his knowledge a person, business, or nonprofit organization with whom he is seeking, or has an arrangement for, employment has a financial interest (18 U.S.C. 208(a)).

(2) Subparagraph (1) of this paragraph does not apply:

(i) If the officer or employee first advises the Department counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such official or his designee that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee; or

(ii) If the financial interest is within one of the following categories which are hereby exempted from the requirements of section 208(a) of title 18, United States Code as being too remote or too inconsequential to affect the integrity of a Government officer's or employee's services;

(a) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in any particular industry.

(b) Ownership of shares of stock and of corporate bonds or other corporate securities, if the current aggregate value of the stocks and other securities so owned in any single corporation is less than $7,500 and is less than 1 percent of the outstanding stock of the organization concerned, and if the employee, his spouse, or minor children are not active in the management of the organization and have no other connection with or interest in it.

(c) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by him or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order 11222, Civil Service Commission regulations, or this part.

§ 0.735–206 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 0.735–207 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 0.735–204(e), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 0.735–208 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law, such as Federal, State, and local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the Department determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

§ 0.735–209 Gambling, betting, and lotteries.

An employee shall not participate, while on Government owned or leased property or while on duty for the Department, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a number slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties;

(b) Under section 3 of Executive Order 10927, namely, solicitations conducted by organizations composed of employees among their own members for organizational support or for benefit or welfare funds for their members, or similar Department-approved activities.

§ 0.735–210 General conduct; and conduct prejudicial to the Government.

(a) Each employee shall conduct himself in a manner that facilitates the effective accomplishment of the work of the Department, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with the Department;

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 0.735–211 Intermediaries and product recommendations.

No employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with the Department nor shall he recommend any device or product tested by or for, or used by, the Department, except as required by his official duties.

§ 0.735–212 Membership in organizations.

(a) An employee may not, in his official capacity as an officer or employee of the Department, serve as a member of a non-Federal or private organization except where express statutory authority exists, or statutory language necessarily implies such authority, or where the Secretary has determined in writing that such service would be beneficial to the Department and consistent with such officer's or employee's service as a Department employee. However, an employee may serve in an individual capacity as a member of a non-Federal or private organization, provided that:

(1) His membership does not violate the restrictions noted in § 0.735–204; and

(2) His official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply

that he is acting in his official capacity.

(b) An employee may be designated in writing to serve as a liaison representative of the Department to a non-Federal or private organization when the Secretary, the Under Secretary, an Assistant Secretary, the General Counsel, or a Regional Administrator, as appropriate, has determined that such service would be beneficial to the Department and provided that:

(1) The activity relates to the work of the Department.

(2) The employee does not participate by vote in the policy determinations of the organization.

(3) The Department is in no way bound by any vote or action taken by the organization.

§ 0.735–213 Prohibited activities by former employees.

A former officer or employee or former Special Government employee of the executive branch of the U.S. Government, of any independent agency of the United States or of the District of Columbia shall not:

(a) At any time after his Government employment has ended, knowingly act as an agent or attorney for anyone other than the United States in connection with any matter involving a specific party or parties in which the United States is a party or has a direct or substantial interest and in which he participated personally and substantially as an officer or employee for the Government through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise while so employed. (18 U.S.C. 207(a).)

(b) Within 1 year after his Government employment has ended, appear personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any matter involving a specific party or parties in which the United States is a party or directly or substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility (18 U.S.C. 202(b) and 207(b)).

§ 0.735–214 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of the Department and of the Government. The attention of each employee is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, second session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 0.735–301 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735–302 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 0.735–204(e).

§ 0.735–303 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735–304 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Department anything of monetary value as a gift, gratuity, loan, entertainment, or favor for himself, or another person, particularly one with whom he has family, business, or financial ties.

(b) The exceptions of § 0.735–203(b), which are applicable to employees, are also applicable to special Government employees.

§ 0.735–305 Applicability of other provisions.

(a) Each special Government employee is subject to the provisions of §§ 0.735–201, 0.735–205(b), 0.735–206 through 0.735–210, 0.735–212, 0.735–213, 0.735–214, and 0.735–411.

(b) Each special Government employee shall acquaint himself with each statute listed in § 0.735–214. A special Government employee engaged on an irregular or occasional basis is bound by the political activity restrictions of the former Hatch Act cited in § 0.735–214(p) only while in an active duty status and for the entire 24 hours of any day during which he is actually employed.

Subpart D—Statements of Employment and Financial Interests

§ 0.735–401 Employees required to submit statements.

Except as provided in § 0.735–403, the following categories of employees shall submit statements of employment and financial interest:

(a) Employees paid at a level of the Executive schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Employees classified at GS–13 or above who are in positions identified in the appendix to this part as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact

on the interests of any non-Federal enterprise.

(c) Employees classified at GS–13 or above who are in positions which the Department has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, and this part. The positions are identified in the appendix to this part.

(d) Employees classified below GS–13 who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section. These positions have been approved by the Civil Service Commission as exceptions that are essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation. The positions are identified in the appendix to this part by footnote 1.

§ 0.735–402 Employee's complaint on filing requirement.

Employees have the opportunity for review through the Department's grievance procedures of a complaint by an employee that his position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 0.735–403 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in § 0.735–401(b) may be excluded from the reporting requirement when the Department Counselor determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by this subpart from the Secretary or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of the Executive order.

§ 0.735–404 Time and place for submission of employees' statements.

(a) An employee required to submit a statement of employment and financial interests pursuant to § 0.735–401 and the appendix to this part shall submit that statement on Form HUD–844 (Revised) to the official designated in paragraph (c) of this section not later than:

(1) Ninety days after the effective date of this part if employed on or before that effective date; or

(2) Thirty days after his entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

(b) Additions to, deletions from, and other amendments of the list of positions in the appendix to this part may be made from time to time as necessary to carry out the purpose of the law, Executive Order 11222, and Part 735 of the Civil Service Commission Regulations (5 CFR Part 735). Such amendments are effective upon actual notification to the incumbents. The amended list shall be submitted at least annually for publication in the FEDERAL REGISTER.

(c) All employees shall submit their statements directly to the General Counsel of the Department as Department Counselor for review and custody. Such statements shall be enclosed in sealed envelopes marked "Standards of Conduct—Department Counselor: Administratively Confidential". Statements previously submitted to other than the Department Counselor for review shall be transferred to the Department Counselor for custody.

§ 0.735–405 Supplementary statements.

(a) Changes in, or additions to, the information contained in an employee's statement shall be reported to the Department Counselor in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

§ 0.735–406 Interests of employee's relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 0.735–407 Information not known by employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 0.735–408 Information prohibited.

This subpart does not require an employee to report information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement.

§ 0.735–409 Confidentiality of employees' statements.

(a) Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence by the Department. To insure this confidentiality, the Civil Service Commission regulations provide that:

(1) The Department shall designate which officials and employees are to review and retain the statements;

(2) Officials and employees designated under subparagraph (1) of this paragraph are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part; and

(3) The Department may not disclose information from a statement except as the Civil Service Commission or the Secretary may determine for good cause shown.

(b) For the purpose of carrying out the provisions of paragraph (a)(1) of this section, the Department Counselor shall review and retain employees' statements.

§ 0.735–410 Effect of employee's statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 0.735–411 Specific provisions for special Government employees.

(a) Except as provided in paragraph (c) of this section, each special Government employee shall submit to the Department Counselor for review and custody Form HUD–844–A (Revised), Statement of Employment and Financial Interests.

(b) The provisions of §§ 0.735–407 through 0.735–410 are applicable to a special Government employee who is required to file a statement.

(c) The Secretary or his designee may waive the provisions of this section for the submission of a statement in the case of a special Government employee who is not a consultant or an expert when the Department finds that the duties of the position held by that special Government employee are of a nature and at such level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those

terms by Chapter 304 of the Federal Personnel Manual.

(d) A statement required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee. Each special Government employee shall keep his statement current throughout his employment with the Department by the submission of supplementary statements.

APPENDIX—LIST OF POSITIONS SUBJECT TO SUBPART D

Officers and employees in the following positions are subject to the provisions of Subpart D of this part:

OFFICE OF THE SECRETARY

Executive Assistant to the Secretary.
Administrative Officer to the Secretary.
Special Assistants to the Secretary.
Assistant to the Secretary for Labor Relations.
General Assistant Secretary.
Assistant to the Secretary for Congressional Relations.
Director, Office of Public Affairs.
Director, Office of International Affairs.

OFFICE OF THE UNDER SECRETARY

Under Secretary.
Deputy Under Secretary for Policy Analysis and Program Evaluation.
Special Assistants to the Under Secretary.

OFFICE OF THE GENERAL COUNSEL

General Counsel.
Deputy General Counsels.
Special Assistants to the General Counsel.
Associate General Counsels.
Assistant General Counsels.
Regional Counsels.
Area Counsels.

ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND MANAGEMENT

Assistant Secretary.
Deputy Assistant Secretary for Community Planning and Management.
Director, Office of Administration.
Director, Budget Division.
Director, Management and Administrative Services Division.
Director, Management Information Division.
Director, Office of Policy and Program Development.
Deputy Director, Office of Policy and Program Development.
Director, Urban Growth Policy Division.
Director, Program Evaluation Division.
Director, Program Development Division.
Director, Office of Planning and Management Grants.
Director, Program Coordination Division.
Director, Field Support Division.
Director, Office of State and Local Management Assistance.
Director, Intergovernmental Relations Division.
Director, Management Systems Division.
Director, Technical Assistance Division.
Director, Office of Community Goals and Standards.
Director, Environmental and Land Use Planning Division.
Director, Relocation and Workable Programs Division.
Director, Office of New Communities Development.
Deputy Director, Office of New Communities Development.
Director, Application Review Division.
Director, Project Management Division.
Director, Governmental Liaison Division.

ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY

Assistant Secretary.
Special Assistants to Assistant Secretary.
Deputy Assistant Secretary for Equal Opportunity.
Director, Office of Housing Opportunity.
Deputy Director, Office of Housing Opportunity.
Director, Investigation Division.
Director, Conciliation Division.
Director, Practices and Review Division.
Director, Office of Contract Compliance and Employment Opportunity.
Director, Contract Compliance Division.
Director, Job Development Division.
Director, Business Development Division.
Director, Program Planning and Evaluation.
Director, Education and Training Office.

ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT AND FEDERAL HOUSING COMMISSIONER

Assistant Secretary.
Deputy Assistant Secretary for Housing Production and Mortgage Credit and Deputy Federal Housing Commissioner.
Executive Assistant Commissioner.
Assistant Commissioner for Field Operations.
Assistant Commissioner for Technical and Credit Standards.
Assistant Commissioner for Programs.
Assistant Commissioner for Subsidized Housing Programs.
Assistant Commissioner for Unsubsidized Insured Housing Programs.
Assistant Commissioner for Rehabilitation.
Assistant Commissioner for Administration.
Assistant Commissioner for Property Improvement.
Assistant Commissioner-Comptroller.
Administrator, Office of Interstate Land Sales Registration.
Deputy Assistant Commissioner for Technical and Credit Standards.
Deputy Assistant Commissioner for Programs.
Deputy Assistant Commissioner for Subsidized Housing Programs.
Deputy Administrator, Office of Interstate Land Sales Registration.
Director, Mortgage Insurance Programs Support Division.
Director, Publicly Financed Programs Support Division.
Director, Architecture and Engineering Division.
Director, Subsidized Mortgage Insurance Division.
Director, Publicly Financed Housing Division.
Director, Multifamily Division.
Director, Single Family Division.
Director, Participation and Compliance Review Division.
Director, Management and Operations Assistance Division.
Director, Administrative Proceedings Division.
Director, Examination Division.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

President.
Executive Vice-President.
Vice-President-Controller.
Secretary-Treasurer.
Executive Assistant.
Director, Office of Mortgage-Backed Securities.
Director of Loans.

ASSISTANT SECRETARY FOR COMMUNITY DEVELOPMENT

Assistant Secretary.
Deputy Assistant Secretary for Community Development.
Executive Assistant.
Special Assistant to the Assistant Secretary.
Director, Office of Management.
Director, Division of Program Budgeting.
Director, Division of Organization and Management.
Director, Division of Local Finance and Administrative Practices.
Director, Division of Administrative Services.
Director, Office of Policy and Resource Development.
Deputy Director, Office of Policy and Resource Development.
Director, Policy Development Division.
Director, Evaluation Division.
Director, Resource Utilization Division.
Director, Program Regulations Division.
Director, Office of Program Support.
Director, Division of Field Support.
Deputy Director of Field Support.
Director, Division of Technical Support.
Deputy Director, Division of Technical Support.
Chief, ADP and Program Statistics Branch.
Chief, Conservation and Rehabilitation Branch.
Chief, Project Engineering Branch.
Chief, Real Estate Branch.

ASSISTANT SECRETARY FOR HOUSING MANAGEMENT

Assistant Secretary.
Deputy Assistant Secretary for Housing Management.
Director, Office of Administrative and Local Agency Services.
Director, Project Financing Staff.
Director, Office of Field Support.
Director, Office of Program Development.
Director, Office of Housing Programs.
Director, Office of Counseling and Community Services.
Director, Office of Loan Management.
Director, Office of Property Disposition.
Audit Liaison Officer, Office of Administrative and Local Agency Services.
Director, Budget Division, Office of Administrative and Local Agency Services.
Director, Local Agency Services Division, Office of Administrative and Local Agency Services.
Supervisory Supply Management Officer, Maintenance Engineering Division, Office of Housing Programs.
Director, Reconditioning and Contracting Division, Office of Property Disposition.
Director, Contracting Branch, Reconditioning and Contracting Division, Office of Property Disposition.
Contracting Officers, Reconditioning and Contracting Division, Office of Property Disposition.
Director, Emergency Preparedness Staff.

ASSISTANT SECRETARY FOR RESEARCH AND TECHNOLOGY

Assistant Secretary.
Deputy Assistant Secretary for Research and Technology.
Director, Office of Administration and Operations.
Administrative Officer.
Director, Operation BREAKTHROUGH.
Deputy Director, Operation BREAKTHROUGH.
Director, Site and Land Development Division.
Director, Technical Operations Division.
Director, Market Aggregation Division.
Market Aggregation Analyst.

Director, Site Relations and Negotiations Division.
Director, Special Projects.
Director, Technical Evaluation.
Director, Building Technology and Certification Division.
Director, Environmental Factors and Public Utilities Division.
Chief, Utilities Systems Research.
Director, Urban Renewal Demonstration Division.
Director, Comprehensive Planning Research Division.
Director, Business Participation Division.
Director, Office of Planning and Program Control.
Program Specialist.
Chairman, Urban Information Systems Interagency Committee.

FEDERAL INSURANCE ADMINISTRATION

Federal Insurance Administrator.
Assistant Administrator for Program Development.
Assistant Administrator (Flood Insurance).
Assistant Administrator (Urban Property Insurance).
Assistant Administrator (Crime Insurance).
Director, Insurance Contracts Division.
Chief Actuary.
Assistant Administrator, Special Programs.

ASSISTANT SECRETARY FOR ADMINISTRATION

Assistant Secretary.
Deputy Assistant Secretary for Administration.
Director, Financial Systems and Services.
Deputy Director, Financial Systems and Services.
Director, Office of General Services.
Deputy Director, Office of General Services.
Director, Contracts and Agreements Division, Office of General Services.
Deputy Director, Contracts and Agreements Division, Office of General Services.
Director, Supply and Facilities Management Division, Office of General Services.
Director, Office of Audit.
Deputy Director, Office of Audit.
Regional Audit Managers, Office of Audit.
Director, Office of Investigation.
Deputy Director, Office of Investigation.
Investigation Field Directors.
Director, FHA Audit Division, Office of Audit.
Deputy Director, FHA Audit Division, Office of Audit.

REGIONAL OFFICES

Regional Administrator.
Deputy Regional Administrator.
Director, Program Planning.
Regional Breakthrough Director.
Assistant Regional Administrator for Community Planning and Management.
Assistant Regional Administrator for Community Development.
Assistant Regional Administrator for Housing Production and Mortgage Credit.
Production Coordinator.
Assistant Regional Administrator for Housing Management.
Loan and Contract Servicing Officer.
Assistant Regional Administrator for Equal Opportunity.
Director, Contract Compliance and Employment Opportunity.
Director, Housing Opportunity.
Business and Manpower Development Officer.

AREA OFFICES

Area Director.
Deputy Area Director.
Director, Operations Division.
Deputy Director, Operations Division.
Assistant Director, Technical Services Branch.
Assistant Director, Single Family Operations Branch.
Assistant Director, Planning and Relocation Branch.
Director, Housing Management Division.
Director, Equal Opportunity Division.

INSURING OFFICES

Director.
Deputy Director.
Assistant Director.
Assistant Director (Chief of Operations).
Chief Underwriter.

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.
1.1 Purpose.
1.2 Definitions.
1.3 Application of Part 1.
1.4 Discrimination prohibited.
1.5 Assurances required.
1.6 Compliance information.
1.7 Conduct of investigations.
1.8 Procedure for effecting compliance.
1.9 Hearings.
1.10 Decisions and notices.
1.11 Judicial review.
1.12 Effect on other regulations; forms and instructions.
Appendix A.

AUTHORITY: The provisions of this Part 1 are issued under sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; sec. 502(a), 62 Stat. 1283, 12 U.S.C. 1701c; and the laws listed in Appendix A to this Part 1.

§ 1.1 Purpose.

The purpose of this Part 1 is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this Part 1—

(a) The term "Department" means the Department of Housing and Urban Development.

(b) The term "Secretary" means the Secretary of the Department of Housing and Urban Development.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this Part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes (1) grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term "applicant" means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, contract, request, or plan.

§ 1.3 Application of Part 1.

This Part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in Appendix A of this Part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity after the effective date of this Part 1. This Part 1 does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before the effective date of this Part 1, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(c). The fact that certain financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

§ 1.4 Discrimination prohibited.

(a) *General.* No person in the United States, shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this Part 1 applies, may not, directly or through contractual or other arrangements, on the ground of race, color, or natural origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(2) (i) A recipient, in determining the location or types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractural or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of Title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list, but shall limit the number of refusals without cause as prescribed by the responsible Department official. The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of this subdivision (ii), this Part 1, and Title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(4) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program or activity to which this Part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, lay-off, or termination, up-grading, demotion, or transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes or amends it.

(d) *Exception.* A person shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program or activity limited by Federal law to individuals of a particular race, color, or national origin different from his.

(79 Stat. 669; 42 U.S.C. 1451)

§ 1.5 Assurances required.

(a) *General.* Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after the effective date of this Part 1, and every application for such Federal financial assistance submitted on or after such effective date, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Pre-existing contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to the effective date of this Part 1, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Pre-existing contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to the effective date of this Part 1, and provides for periodic payments for the continuation of the program or activity,

the recipient shall, in connection with the first application for such periodic payments on or after the effective date of this Part 1, (1) submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1, or a statement of the extent to which it is not, at the time the statement is made, so conducted, and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1, or reasonable assurance that any noncompliance indicated in the statement under clause (1) will be corrected.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this Part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part 1.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Part 1.

§ 1.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this Part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part 1.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.

(2) If an investigation does not warrant action pursuant to paragraph (d) (1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Act of this Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this Part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part 1, may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 1.5.* If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to the effective date of this Part 1.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the

committees of the House and Senate having legislative jurisdiction over the program or activity involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the applicant or recipient has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least ten days from the mailing of such notice to the applicant or recipient. During this period of at least ten days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(c) of this Part 1 and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with sections 3105 and 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with the practice and procedure for hearings issued by the Department and published in Part 2 of this subtitle relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part 1, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Agency and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts with respect to two or more programs or activities to which this Part 1 applies are asserted to constitute noncompliance with this Part 1 or noncompliance with this Part 1 and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part 1. Final decisions in such cases, insofar as this Part 1 is concerned, shall be made in accordance with § 1.10.

§ 1.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in the rules of procedure issued by the Department (Part 2 of this subtitle), file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1.9(a) a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part 1 with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program or activity involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Part 1, including provisions designed to assure that no Federal financial assistance will

thereafter be extended under such program or activity to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part 1, or to have otherwise failed to comply with this Part 1, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part 1.

§ 1.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 1.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this Part 1 applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient of such assistance under such program or activity for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Part 1, except that nothing in this Part 1 shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this Part 1. Nothing in this Part 1, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Orders 11246 and 11375 and regulations issued thereunder, or (2) Executive Order 11063 and regulations issued thereunder, or any other Order, regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this Part 1 is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this Part 1 as applied to programs and activities to which this Part 1 applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this Part 1 (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this Part 1 to similar programs or activities and in similar situations.

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO WHICH THIS PART 1 APPLIES

1. Advance Acquisition of Land. Sec. 704, Housing and Urban Development Act of 1965, 42 U.S.C. 3104.

2. Alaska Housing Assistance. Sec. 1004, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

3. Assistance to Nonprofit Sponsors of Low and Moderate Income Housing. Sec. 106, Housing and Urban Development Act of 1968, 12 U.S.C. 1701x.

4. College Housing Program. Title IV, Housing Act of 1950, 12 U.S.C. 1749.

5. Community Disposition Program. Atomic Energy Community Act of 1955, Secs. 11–13, 21, 31–36, 41–43, 51–57, 61–66, 101–103, 111–119, 42 U.S.C. 2301; E.O. 11105, 28 F.R. 3009.

6. Comprehensive Planning Assistance and Comprehensive Planning Research and Demonstration Programs. Sec. 701, Housing Act of 1954, 40 U.S.C. 461.

7. Federal-State Training and City Planning and Urban Studies Fellowship Programs. Title VIII, Housing Act of 1964, 20 U.S.C. 801–807.

8. Home Ownership for Lower Income Families. Sec. 235, National Housing Act, 12 U.S.C. 1715z.

9. Housing for Elderly or Handicapped. Sec. 202, Housing Act of 1959, 12 U.S.C. 1701q.

10. Loan and Grant Assistance for Planning Housing Projects in Appalachia, Sec. 207, Appalachian Regional Development Act of 1965, as amended, 81 Stat. 257, 40 U.S.C. App. 207.

11. Low-Income Housing Demonstration Grant Program. Sec. 207, Housing Act of 1961, 42 U.S.C. 1436.

12. Low-Rent Public Housing Program (including housing in private accommodations) United States Housing Act of 1937, 42 U.S.C. 1401.

13. Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

14. National Flood Insurance Program. Title XIII, Housing and Urban Development Act of 1968, 42 U.S.C. 4001.

15. Neighborhood Facilities Grants. Sec. 703, Housing and Urban Development Act of 1965, 42 U.S.C. 3103.

16. New Communities. Title IV, Housing and Urban Development Act of 1968, 42 U.S.C. 3901.

17. New Technologies in the Development of Housing for Lower Income Families. Sec. 108, Housing and Urban Development Act of 1968, 12 U.S.C. 1701z.

18. Open-Space Land, Urban Beautification, Historic Preservation, and Demonstrations. Title VII, Housing Act of 1961, 42 U.S.C. 1500–1500e.

19. Public Facilities Liquidating Programs. See, generally, Title II of Independent Offices Appropriation Act of 1955, Public Law 83–428, 12 U.S.C. 1701g–5.

20. Public Facility Loans Program. Title II, Housing Amendments of 1955, 42 U.S.C. 1491–1497 except 1492(a)(2), Assistance for Mass Transportation Facilities and Equipment (transferred to Secretary of Transportation by Reorganization Plan No. 2 of 1968, 33 F.R. 6965).

21. Public Works Acceleration Act Program. Public Works Acceleration Act, 42 U.S.C. 2641.

22. Public Works Planning Advances. Sec. 702, Housing Act of 1954, 40 U.S.C. 462.

23. Rehabilitation Loan Program. Sec. 312, Housing Act of 1964, 42 U.S.C. 1452.

24. Rent Supplement Program. Sec. 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

25. Rental and Cooperative Housing for Lower Income Families. Sec. 236, National Housing Act, 12 U.S.C. 1715z–1.

26. Special Assistance Functions. Sec. 305, National Housing Act, 12 U.S.C. 1720, including purchase of below market interest rate mortgages insured by FHA under section 221(d)(3), National Housing Act, 12 U.S.C. 1715l(d)(3).

27. Urban Information and Technical Assistance Services. Title IX, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3351–3356.

28. Urban Mass Transportation Programs (Research, Development and Demonstration Projects; Grants for Technical Studies; Grants for Research and Training). Sections 6(a), 9, and 11 of the "Urban Mass Transportation Act of 1964, as amended;" Reorganization Plan No. 2 of 1968, 33 F.R. 6965; 49 U.S.C. 1605(a), 1607(a), 1607(c).

29. Urban Renewal Demonstration Grant Program. Sec. 314, Housing Act of 1954, 42 U.S.C. 1452a.

30. Urban Renewal Program (Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs). Title I, Housing Act of 1949, 42 U.S.C. 1450.

31. Urban Research and Technology. Title III, Housing Act of 1948, 12 U.S.C. 1701e, 1701f; sec. 602, Housing Act of 1956, 12 U.S.C. 1701d–3; and secs. 1010 and 1011, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3372 and 3373.

32. Water and Sewer Facilities Grants. Sec. 702, Housing and Urban Development Act of 1965, 42 U.S.C. 3102.

PART 2—PRACTICE AND PROCEDURE FOR HEARINGS UNDER PART 1 OF THIS SUBTITLE

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AUTHORITY: The provisions of this Part 2 issued under sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535(d); and the laws listed in Appendix A to Part 1.

Subpart A—General Information

§ 2.1 Scope of rules.

The rules of procedure in this Part 2 supplement Part 1 of this title and govern the practice for hearings, decisions, and administrative review conducted by the Department of Housing and Urban Development, including each of its organizational units, pursuant to Title VI of the Civil Rights Act of 1964 (sec. 602, 42 U.S.C. 2000d–1) and Part 1 of this title.

§ 2.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights docket clerk during regular business hours. Inquiries may be addressed to the Civil Rights docket clerk, Department of Housing and Urban Development, Washington, D.C. 20410.

§ 2.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 2.4 Suspension of rules.

The responsible Department official with respect to pending matters may modify or waive any rule in this part upon his determination that no party will be unduly prejudiced and the ends of justice will thereby be served, and upon notice to all parties.

Subpart B—Appearance and Practice

§ 2.11 Appearance.

A party may appear in person or by counsel and participate fully in any proceeding. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf. Counsel must be members in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

§ 2.12 Authority for representation.

Any individual acting in a representative capacity in any proceeding may be required to show his authority to act in such capacity.

§ 2.13 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

Subpart C—Parties

§ 2.21 Parties; General Counsel a party.

(a) The term party shall include an applicant or recipient or other person with respect to whom a notice of hearing or opportunity for hearing has been served naming him as respondent.

(b) The General Counsel of the Department of Housing and Urban Development shall be deemed a party to all proceedings.

§ 2.22 Amici curiae.

(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference or, if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the outcome and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.

(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. His brief shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

§ 2.23 Complainants not parties.

A person submitting a complaint pursuant to § 1.7(b) of this title is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

Subpart D—Form, Execution, Service and Filing of Documents

§ 2.31 Form of documents to be filed.

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

§ 2.32 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certificate that he has read the document, that to the best of his knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

§ 2.33 Filing and service.

All notices by the responsible Department official or the presiding officer, and

all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to the responsible Department official or the presiding officer from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights docket clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8:45 a.m. to 5:15 p.m., e.s.t. or d.s.t., whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 2.107.

§ 2.34 Service—how made.

Service shall be made by personal delivery of one copy to each person to be served or by registered or certified mail, return receipt requested, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be air mailed if the addressee is more than 300 miles distant.

§ 2.35 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

§ 2.36 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

Subpart E—Time

§ 2.41 Computation.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

§ 2.42 Extension of time or postponement.

Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of his decision, such requests should be addressed to him. Answers to such requests are permitted if made promptly.

§ 2.43 Reduction of time to file documents.

For good cause, the responsible Department official with respect to pending matters may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 1 of this title.

Subpart F—Proceedings Prior to Hearing

§ 2.51 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to this part.

§ 2.52 Answer to notice.

The respondent, applicant, or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case his answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

§ 2.53 Amendment of notice or answer.

The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.

§ 2.54 Request for hearing.

Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing, the respondent, either in his answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of all right to a hearing and to constitute his consent to the making of a decision on the basis of such information as is available.

§ 2.55 Consolidation.

The responsible Department official may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

§ 2.56 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer. A repetitious motion will not be entertained.

§ 2.57 Responses to motions and petitions.

Within 8 days after a written motion or petition is served, or such other period as the responsible Department official or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

§ 2.58 Disposition of motions and petitions.

The responsible Department official or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the presiding officer or the responsible Department official, respectively, not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral argument shall not be held on written motions or petitions unless the presiding officer in his discretion expressly so orders.

Subpart G—Responsibilities and Duties of Presiding Officer

§ 2.61 Who presides.

A presiding officer shall preside over all proceedings held under this part.

§ 2.62 Designation of hearing examiner.

The designation of a hearing examiner as presiding officer shall be in

writing, and shall specify whether the examiner is to make an initial decision or to certify the entire record, including his recommended findings and proposed decision, to the responsible Department official, and may also fix the time and place of hearing. A copy of such designation shall be served on all parties. After service of the designation of a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 2.63 Authority of presiding officer.

The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings or, upon due notice to the parties, change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and the conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude, or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue initial or recommended decisions, or final decisions where the responsible Department official presides.

(k) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

Subpart H—Hearing Procedures

§ 2.71 Statements of positions and trial briefs.

The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing, to submit trial briefs, and to participate in conferences to settle, simplify, or fix the issues in a proceeding.

§ 2.72 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of Part 1 of this title. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from his failure timely to answer, or from his admissions or stipulations in the record, that there are no matters of material fact in dispute, the presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 2.101. Thereafter the proceedings shall go to conclusion in accordance with Subpart J of this part. The presiding officer may allow an appeal from such order in accordance with § 2.86.

§ 2.73 Testimony.

Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in his discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 2.75 and 2.76, witnesses shall be available at the hearing for cross-examination.

§ 2.74 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 2.75 Affidavits.

An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods, affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and, not less than 7 days prior to hearing, a party may file and serve written objection to any affidavit on the ground that he believes it necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 2.76 Depositions.

Upon such terms as the presiding officer determines to be just, and for the convenience of the parties or of the Department, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.

§ 2.77 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the presiding officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the presiding officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

§ 2.78 Evidence.

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

§ 2.79 Cross-examination.

A witness may be cross-examined on any matter material to the proceeding.

§ 2.80 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 2.81 Objections.

Objections to evidence shall be timely and briefly state the ground relied upon.

§ 2.82 Exceptions to rulings of presiding officer unnecessary.

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

§ 2.83 Official notice.

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 2.84 Public document items.

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

§ 2.85 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 2.86 Appeals from ruling of presiding officer.

Rulings of the presiding officer may not be appealed to the responsible Department official prior to his consideration of the entire proceeding except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the responsible Department official within such period as the presiding officer directs. No oral argument will be heard unless the responsible Department official directs otherwise. At any time prior to submission of the proceeding to him for decision, the responsible Department official may direct the presiding officer to certify any question or the entire record to him for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

Subpart I—The Record

§ 2.91 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 2.92 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart J—Posthearing Procedures, Decisions

§ 2.101 Posthearing briefs: proposed findings and conclusions.

(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs.

(b) Briefs should include a summary of the evidence relied upon, together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

§ 2.102 Decisions following hearing.

When the time for submission of posthearing briefs has expired, the presiding officer, if the responsible Department official, shall make a final decision. If the presiding officer is a hearing examiner, he shall certify the entire record, including his recommended findings and proposed decision, to the responsible Department official or, if so authorized, shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

§ 2.103 Exceptions to initial or recommended decisions.

Within 30 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the responsible Department official. Any other party may file a response thereto within 45 days after the mailing of the decision. Upon the filing of such exceptions, the responsible Department official shall review the decision and issue his decision thereon.

§ 2.104 Final decisions.

(a) The responsible Department official shall make the final decision in all proceedings under this part after expiration of all applicable time limits provided in § 2.101 or § 2.103.

(b) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 30-day period specified in § 2.103, such initial decision shall become the final decision of the responsible Department official upon his approval thereof and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10 (c) of the Administrative Procedure Act), subject to the provisions of paragraph (c) of this section.

(c) Where the final decision of the responsible Department official does not provide for the suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, it is an "order" within the meaning of 5 U.S.C. 551(6) (formerly section 2(d) of the Administrative Procedure Act) and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act). When such final decision of the responsible Department official (other than the Secretary) does provide for suspension or termination of, or the refusal to grant or continue, Federal financial assistance or the imposition of any other sanction, such decision shall not constitute an "order" or "final agency action" until approved by the Secretary.

(d) All final decisions shall be promptly served on all parties, and amici, if any.

§ 2.105 Oral argument to the responsible Department official.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, or upon review on initiative of the responsible Department official, he shall make such request in writing. The responsible Department official may grant or deny such requests in his discretion. If granted, he will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Civil Rights docket clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidation of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Civil Rights docket clerk at least 7 days before the argument.

§ 2.106 Service on amici curiae.

All briefs, exceptions, memoranda, requests, and decisions referred to in this Subpart J shall be served upon amici curiae at the same times and in the same manner required for service on parties.

Any written statements of position and trial briefs required of parties under § 2.71 shall be served on amici.

Subpart K—Judicial Standards of Practice

§ 2.111 Conduct.

Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his best efforts to restrain his client from improprieties in connection with a proceeding.

§ 2.112 Improper conduct.

With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the responsible Department official by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his staff. It is improper that such interested persons or any members of the Department's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having responsibility for a decision in the proceeding, or his staff. It is improper for any person to solicit communications to any such officer, or his staff, other than proper communications by parties or amici curiae.

§ 2.113 Ex parte communications.

Only persons employed by or assigned to work with the responsible Department official who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the responsible Department official, or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The responsible Department official, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons who are employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

§ 2.114 Expeditious treatment.

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

§ 2.115 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights docket clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 2.113. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of Part 1 of this title are not prohibited.

§ 2.116 Filing of ex parte communications.

A prohibited communication in writing received by the Secretary, the responsible Department official, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

Subpart L—Posttermination Proceedings

§ 2.121 Posttermination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that, since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with Part 1 of this title, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request, the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 2.131 Definitions.

(a) The definitions contained in § 1.2 of this title, to the extent applicable, apply to this part.

(b) The term "hearing examiner" is used in the sense in which used in 5 U.S.C. 3105 and 3344 (formerly sec. 11 of the Administrative Procedure Act).

(c) "Presiding officer," in any particular matter, may be the assigned hearing examiner or the responsible Department official.

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY AND PROCEDURES

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

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AUTHORITY: The provisions of this Part 7 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969, 34 F.R. 12985, Aug. 12, 1969; 42 U.S.C. 2000e note.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

§ 7.1 Policy.

In conformity with the policy expressed in Executive Order 11478 and with implementing regulations of the Civil Service Commission, codified under

5 CFR Part 713, it is the policy and intent of the Department of Housing and Urban Development to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination because of race, color, religion, sex, or national origin in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative action at every management level within the Department.

§ 7.2 Definitions.

(a) For the purpose of this subpart, "organizational unit" means the jurisdictional area of the Office of the Secretary, each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, and each Regional Administrator. For the purpose of this subpart the jurisdictional area of each Regional Administrator includes all HUD Area Offices and Insuring Offices within the region.

(b) The term "EEO," as used herein, means Equal Employment Opportunity.

§ 7.3 Designations.

(a) *Director of Equal Employment Opportunity.* The Assistant Secretary for Equal Opportunity is designated the Director of EEO.

(b) *Deputy Director of Equal Employment Opportunity.* The Deputy Assistant Secretary for Equal Opportunity is designated the Deputy Director of EEO.

(c) *Equal Employment Opportunity Officers.* Each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, and each Regional Administrator shall be the EEO Officer for his organizational unit. The Executive Assistant to the Secretary shall be the EEO Officer for the Office of the Secretary.

(d) *Equal Employment Opportunity Counselors.* Each EEO Officer, with the concurrence of the Director of EEO, shall designate a sufficient number of EEO Counselors for his organizational unit.

§ 7.4 Affirmative action programs.

Each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, the Executive Assistant to the Secretary, each Regional Administrator, Area Office Director, and Insuring Office Director shall establish, maintain, and carry out a plan of affirmative action to promote equal opportunity in every aspect of employment policy and practice. Each plan shall be specifically designed to recognize conditions, situations, and needs of the particular office, community characteristics, and problems of the particular locality. Each plan is subject to approval by the Director of EEO and shall be developed within the framework of departmentwide guidelines published by the Director of EEO.

RESPONSIBILITIES

§ 7.10 Responsibilities of the Director and Deputy Director of EEO.

The Director and Deputy Director of EEO are assigned the functions of:

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the Government's equal employment opportunity policy and the Department's EEO program;

(b) In coordination with other officials, developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO program, including a departmentwide program of affirmative action developed in coordination with other officials; he approves programs of affirmative action established throughout the Department;

(c) Evaluating from time to time the sufficiency of the Department's EEO program and reporting thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

(d) Appraising the Department's personnel operations at regular intervals to insure their conformity with the policy of the Government and the Department's equal employment opportunity program;

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program;

(f) Providing for counseling by an EEO Counselor of an aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 7.31;

(g) Providing for the receipt and investigation and for the prompt, fair, and impartial consideration and disposition of individual complaints involving issues of discrimination within the Department subject to §§ 713.211 through 713.222 of the regulations of the Civil Service Commission, codified under 5 CFR Part 713;

(h) Providing for the receipt, investigation, and disposition of general allegations by organizations or other third parties of discrimination in personnel matters within the Department which are unrelated to an individual complaint of discrimination, with notification of decision to the party submitting the allegation;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(j) Concurring in the designations of EEO Counselors by each EEO Officer.

§ 7.11 Responsibilities of the EEO Officers.

Each EEO Officer shall:

(a) Advise the Director or Deputy Director of EEO on all matters affecting the implementation of the Department's EEO policy and program in his organizational unit;

(b) Develop and maintain a program of affirmative action for his organizational unit and insure that it is carried out in an exemplary manner;

(c) Serve as processing office for discrimination complaints and keep the Director or Deputy Director of EEO informed of significant developments;

(d) Publicize to all employees of the organizational unit for which he is responsible the name and address of the Director and Deputy Director of EEO, the EEO Officer, and the EEO Counselors;

(e) Inform all supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselor and of the importance of cooperating with him in the effort to informally find solutions to problems brought to his attention by employees and applicants; and

(f) Review the activities of the EEO Counselors in the organizational unit as well as furnish guidance and otherwise assist them in their work.

§ 7.12 Responsibilities of EEO Counselors.

The EEO Counselors are responsible for counseling, in accordance with § 7.26, any employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin.

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, and procedures which will promote continuing affirmative action to insure equal opportunity in the recruitment, selection, placement, training, and promotion of employees;

(b) Provide positive assistance and guidance to organizational units and personnel offices to insure the effective implementation of the personnel management policies, programs, and procedures on equal employment opportunity; and

(c) Participate at the national level with other Government departments and agencies, other employers, and other public and private groups, in cooperative action to improve employment opportunities and community conditions which affect employability.

§ 7.14 Responsibilities of personnel officers.

In conformity with guidelines issued by the Director of Personnel of the Department, personnel officers designated by him shall:

(a) Appraise job structure and employment practices to insure genuine equality of opportunity for all employees to participate fully on the basis of merit

in all occupations and levels of responsibility;

(b) Communicate the Department's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(c) As appropriate, provide personnel information to complainants, complainant's representatives, counselors, and others who are involved in a discrimination complaint;

(d) Evaluate hiring methods and practices to insure fair and impartial consideration for all job applicants;

(e) Insure that new employee orientation programs contain appropriate references to the Department's EEO policies and programs;

(f) Participate in the preparation and distribution of such educational materials as may be necessary to inform adequately all employees of their rights and responsibilities as described in this chapter, including the Department's directives issued to carry out the Equal Employment Opportunity Program;

(g) Develop an on-going training program for various levels of administration and supervision, to insure understanding of the Departmental EEO procedures and practices; and

(h) Actively encourage employees to take full advantage of Government training programs and other educational opportunities.

§ 7.15 Responsibilities of the Assistant Regional Administrators for Equal Opportunity.

Each Assistant Regional Administrator for Equal Opportunity is responsible for advising and assisting the Regional Administrator in carrying out all aspects of the EEO program, including:

(a) Appraising the equal employment opportunity program in the jurisdictional area of the Regional Administrator;

(b) Conducting reviews and making special studies; and

(c) Processing complaints of discrimination in employment.

§ 7.16 Responsibilities of supervisors.

Supervisors shall:

(a) Keep informed on current EEO policies, plans, and procedures;

(b) Provide positive leadership and support for the EEO program;

(c) Maintain relationships with all those supervised in a manner that fosters effective teamwork and high morale, and provide communication with employees on any matter related to equal employment opportunity;

(d) Take all personnel actions on merit principles and in a manner which will demonstrate affirmative equal employment opportunity for his organization;

(e) Insure the greatest possible utilization and development of the skills and potential ability of all subordinates;

(f) Insure that the staff member selected by the EEO Officer to be the EEO Counselor is given sufficient official time to carry out his duties;

(g) Promptly take or recommend appropriate action to overcome any impediment to the achievement of the objectives of the EEO program; and

(h) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity.

§ 7.17 Responsibilities of employees.

All employees of the Department are responsible for:

(a) Being informed as to the Department's EEO program;

(b) Adopting an attitude of full acceptance of minority group associates;

(c) Providing equality of treatment of, and service to, all citizens with whom they come in contact in carrying out their job responsibilities; and

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO program.

PRECOMPLAINT PROCESSING

§ 7.25 Who may request counseling.

An aggrieved person who believes that he has been discriminated against by the Department because of race, color, religion, sex, or national origin, and who wishes to resolve the matter, shall consult with an appropriate EEO Counselor.

§ 7.26 The EEO Counselor.

The EEO Counselor shall:

(a) Make whatever inquiry into the matter he believes necessary;

(b) Seek a solution of the matter on an informal basis;

(c) Counsel the aggrieved person concerning the merits of the matter;

(d) Insofar as is practicable, conduct his final interview with the aggrieved person not later than 15 workdays after the date on which the matter was called to his attention by the aggrieved person;

(e) If the matter has not been resolved to the satisfaction of the aggrieved person, advise the aggrieved person in writing at the final interview of his right to file a complaint of discrimination with the appropriate EEO Officer and of the time limits governing the acceptance of a complaint;

(f) Keep a record of his counseling activities so as to be able to periodically brief the appropriate EEO Officer on those activities;

(g) When advised by the EEO Officer that a complaint of discrimination has been accepted from an aggrieved person, submit a written report to the EEO Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the Department and the aggrieved person concerning the merits of the matter (the report shall be included in the complaint file);

(h) Not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the Department has accepted a complaint of discrimination from him;

(i) Upon acceptance by the Department of a complaint of discrimination from an aggrieved person, be relieved of further counseling responsibility with respect to the matter; and

(j) Be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties.

COMPLAINTS

§ 7.30 Presentation of complaint.

At any stage in the presentation of a complaint, including the counseling stage, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the Department, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the Department and he designates another employee of the Department as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

§ 7.31 Who may file complaint, with whom filed, and time limits.

(a) Any aggrieved person (hereafter referred to as the complainant) who has observed the provisions of § 7.25 may file a complaint if the matter of discrimination was not resolved to his satisfaction. A complaint may also be filed by an organization acting for the complainant with his consent. The Department may accept a complaint only if the complainant:

(1) Brought to the attention of the EEO Counselor the matter causing the complainant to believe he has been discriminated against within 15 calendar days of the date of that matter; or, if a personnel action, within 15 calendar days of its effective date; and

(2) Submitted his complaint in writing to the appropriate EEO Officer within 15 calendar days of the date of his final interview with the EEO Counselor.

(b) The EEO Officer shall extend the time limits in this section:

(1) When the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits; or

(2) For other reasons considered sufficient by the EEO Officer.

(c) A complaint concerned with a continuing discriminatory practice having a material bearing on employment may be filed at any time.

(d) The Department will also accept from an individual or an organization complaints or allegations of a general pattern or practice of discrimination which may be unrelated to any specific

complaint involving a particular individual. Such complaints shall be received, investigated, and processed on an individual basis as determined by the Director of EEO. There is no appeal to the Civil Service Commission from actions taken on these complaints.

(e) The right to withdraw a complaint at any stage is assured.

§ 7.32 Contents.

(a) In order to expedite the processing of complaints of discrimination, the complainant should be urged to include in his complaint the following information:

(1) Whether the alleged discrimination is based upon race, color, religion, sex, or national origin.

(2) The specific action or personnel matter about which the complaint is made.

(3) Facts and other pertinent information to support the allegation of discrimination.

(4) The relief desired.

(b) In no event shall the lack of complete information at the time of filing constitute grounds for refusal by the Department to accept a complaint.

(c) The written complaint need not conform to any particular style or format.

§ 7.33 Acceptability.

(a) The EEO Officer shall determine whether the complaint comes within the purview of this subpart and shall advise the complainant and his representative in writing of the acceptance, rejection, or cancellation of his complaint. A complaint may be rejected, with the concurrence of the Director or Deputy Director of EEO, because it was not filed within the required time limits or because it is not within the purview of this subpart. It may be canceled because of a failure of the complainant to prosecute the complaint or because of a separation of the complainant from the Department for reasons not related to his complaint.

(b) If the EEO Officer determines, and the Director or Deputy Director of EEO concurs, that the complaint is to be rejected or canceled, the written decision of the EEO Officer to the complainant shall inform him of his right to appeal to the Civil Service Commission and of the time limit applicable thereto, if he believes the rejection or cancellation improper.

§ 7.34 Processing.

(a) The EEO Officer will process complaints involving the organizational unit for which he is responsible. However, the Director or Deputy Director of EEO, as he deems necessary, may assume jurisdiction of any case. This may include the designation as processing officer of an official other than the EEO Officer for the organizational unit concerned. In the latter case, the Director or Deputy Director of EEO shall so notify all interested parties.

(b) Based on a request from the EEO Officer, the Director or Deputy Director of EEO shall provide for the prompt investigation of the complaint. The request for an investigation shall be made in writing to the Director, Office of Investigation.

(1) The person assigned to investigate the complaint shall occupy a position in the Department which is not, directly or indirectly, under the jurisdiction of the head of that part of the Department in which the complaint arose.

(2) The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational unit in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file.

(3) Insofar as is practicable, the investigative process shall be completed within 30 calendar days.

(4) The investigative file shall contain the various documents and information acquired during the investigation including affidavits: (i) Of the complainant; (ii) of the official charged with discrimination; and (iii) of other persons interviewed and copies of, or extracts from, records, policy statements, or regulations of the Department organized to show their relevance to the complaint or the general environment out of which the complaint arose.

(5) The investigator shall be furnished a written authorization to: (i) Investigate all aspects of complaints of discrimination, (ii) require all employees of the Department to cooperate with him in the conduct of the investigation, and (iii) require employees of the Department having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

(6) The investigator shall submit to the EEO Officer and to the Director of EEO the results of the investigation as well as the investigative file, which shall be included in the complaint file.

(7) The EEO Officer shall furnish the complainant or his representative a copy of the investigative file.

§ 7.35 Adjustment of complaint.

The EEO Officer shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file.

(a) *Adjustment arrived at.* If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing by the EEO Officer, signed by him, the complainant, and other appropriate persons, and made part of the complaint file. The EEO Officer shall furnish a copy of the terms to the complainant and forward the complaint file to the Director or Deputy Director of EEO.

(b) *Adjustment not arrived at.* If an adjustment of the complaint is not arrived at, the EEO Officer shall notify the complainant in writing of the proposed disposition of his case. The notice shall advise the complainant of his right to a hearing with subsequent decision by the Director or Deputy Director of EEO. The notice also shall indicate the complainant's right to a decision without a hearing if he so elects. The notice shall advise the complainant that he has 7 calendar days from receipt of the notice to inform the EEO Officer whether or not a hearing is desired. The EEO Officer shall make a copy of the notice a part of the complaint file.

(1) *No hearing to take place.* Upon timely notification to the EEO Officer by the complainant that he does not desire a hearing, or upon his failure to notify the EEO Officer of his wishes within the 7-day period, the EEO Officer shall forward, the complaint file to the Director or Deputy Director of EEO for decision.

(2) *Hearing to take place.* Upon timely notification to the EEO Officer by the complainant that he desires a hearing, the EEO Officer shall take the steps described in § 7.36.

§ 7.36 Hearing.

(a) *Appeals Examiner.* The hearing shall be held by an appeals examiner who must be an employee of a Federal agency other than the Department. The EEO Officer shall request the appropriate local office of the Civil Service Commission to supply the name of an appeals examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit the complaint file to the appeals examiner who shall review it to determine whether further investigation is needed before scheduling the hearing. The complaint file shall include all the documents described in § 7.40 which have been acquired in the processing of the complaint. When the appeals examiner determines that further investigation is needed, he shall remand the complaint to the EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements of § 7.34 apply to any further investigation by the Department on the complaint. The appeals

examiner shall schedule the hearing for a convenient time and place.

(c) *Prehearing conference.* In arranging for the hearing, the appeals examiner at his discretion may arrange a prehearing conference during which he shall seek to clarify the issues, accept stipulations on facts to which the interested parties may agree, establish a schedule for the hearing, and explain his role in the hearing.

(d) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the appeals examiner to have a direct connection with the complaint; (2) the appeals examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the appeals examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative and the representatives of the Department at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(e) *Powers of appeals examiner.* In addition to the other powers vested in the appeals examiner by the Department in accordance with this subpart, the appeals examiner is authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(f) *Witnesses at hearing.* The appeals examiner shall request the EEO Officer to make available as a witness at the hearing an employee requested by the complainant when the appeals examiner determines that the testimony of the employee is necessary. The appeals examiner shall also request the appearance of any other employee whose testimony he desires to supplement the information in the investigative file. The appeals examiner shall give the complainant his reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. Employees shall be made available as witnesses at a hearing on a complaint when so requested by the appeals examiner and it is administratively practicable to comply with the request. When it is not administratively practicable to comply with the request for a witness, the EEO Officer shall provide an explanation to the appeals examiner. If the explanation is inadequate, the appeals examiner shall so advise the EEO Officer and request that the employee be made available as a witness at the hearing. If the explanation is adequate, the appeals examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony at the hearing or during the investigation.

(g) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the appeals examiner at the hearing shall be made a part of the record of the hearing. If the Department submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the Department representative for reproduction.

(h) *Findings, analysis, and recommendations.* The appeals examiner shall transmit to the Director or Deputy Director of EEO the complaint file (including the record of the hearing), together with his findings and analysis with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose and his recommended decision on the merits of the complaint, including recommended remedial action where appropriate. The appeals examiner shall notify the complainant of the date on which this was done. In addition, the appeals examiner shall transmit, by separate letter to the Director or Deputy Director of EEO, whatever findings and recommendations he considers appropriate with respect to conditions in the Department even though they have no bearing on the matter which gave rise to the complaint or the general environment out of which the complaint arose.

§ 7.37 Relationship to other HUD appellate procedures.

(a) Except as provided in paragraphs (b) and (c) of this section, when a complainant makes a written allegation of discrimination because of race, color, religion, sex, or national origin in connection with an action that would otherwise be processed under the grievance or appeals procedure of the Department, the Department may process the allegation of discrimination under its grievance or appeals procedure when that procedure meets the principles and requirements in §§ 7.25 through 7.38. However, with regard to the issue of discrimination (as distinguished from other aspects of the action), the Director or Deputy Director of EEO shall make the decision of the Department as provided in § 7.39. That decision shall be incorporated in and become a part of the decision on the grievance or the appeal.

(b) An allegation of discrimination made in connection with an appeal under Subpart B of 5 CFR Part 771 and appropriate Department procedures shall be processed under that subpart and said procedures.

(c) An allegation of discrimination made in connection with a grievance under Subpart C of 5 CFR Part 771 and HUD Handbook 771.2, Employee Grievances, shall be processed under this subpart.

§ 7.38 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Department shall proceed with the complaint without undue delay so that the complaint is resolved, except in unusual circumstances, within 60 calendar days after its receipt by the appropriate EEO officer, exclusive of time spent in the processing of the complaint by the appeals examiner. When the complaint has not been resolved within this time limit, the complainant may appeal to the Civil Service Commission for a review of the reasons for the delay. Upon review of this appeal, the Commission may require the Department to take special measures to insure the prompt processing of the complaint, or the Commission may accept the appeal for consideration pursuant to §§ 7.45 through 7.49.

(b) The Director of EEO may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of canceling for failure to prosecute, he may adjudicate the complaint if sufficient information for that purpose is available.

§ 7.39 Decision by Director of EEO.

(a) Following consultation with the General Counsel and the Assistant Secretary for Administration, the Director of EEO shall make the decision of the Department on a complaint based on information in the complaint file.

(b) The decision shall be in writing and shall be transmitted by letter to the complainant and his representative, with copies to the head of the organizational unit in which the complaint arose; the Assistant Secretary for Administration; and the General Counsel. When there has been a hearing on the complaint, the complainant and his representative shall be furnished a copy of the findings, analysis, and recommended decision of the appeals examiner as described in § 7.36(h), as well as a copy of the transcript of the oral testimony and other oral statements at the hearing.

(1) When there has been a hearing, the decision shall adopt, reject, or modify the decision recommended by the appeals examiner. When the decision is to reject or modify the recommended decision of the appeals examiner, the letter transmitting the decision shall set forth the reasons for rejection or modification.

(2) When there has been neither an adjustment as described in § 7.35 nor a hearing, the letter transmitting the decision shall set forth the findings, analysis, and decision of the Director of EEO.

(c) The decision shall require any remedial action authorized by law determined to be necessary or desirable to effect the resolution of the issues of discrimination and to promote the policy of equal opportunity. In such cases, the

decision shall include any necessary instructions to the head of the organizational unit concerned and the Assistant Secretary for Administration as to the specific action to be taken with respect to each individual involved.

(d) The letter transmitting the decision shall advise the complainant of his right to appeal the decision on his complaint to the Civil Service Commission if he is not satisfied with it and of the time limit within which he must file the appeal pursuant to § 7.47.

(e) An employee, other than a complainant, who believes that a decision constitutes an inequity to him, has recourse to the Department grievance procedures or, as appropriate, the Department adverse action procedures including opportunity for an appeal to the Civil Service Commission.

§ 7.40 Complaint file.

The Director of EEO shall establish and maintain a complaint file containing all documents pertinent to the complaint. The complaint file, which shall not contain any document that has not been made available to the complainant, shall include copies of:

(a) The written report of the EEO Counselor to the EEO Officer on whatever counseling efforts were made with regard to the complainant's case before a formal complaint was filed by the complainant as described in §§ 7.25 and 7.26;

(b) The complaint;

(c) The investigative file;

(d) If the complaint is withdrawn by the complainant, a written statement by the complainant or his representative to that effect;

(e) If the adjustment of the complaint is arrived at as described in § 7.35, the written record of the terms of the adjustment;

(f) If no adjustment of the complaint is arrived at as described in § 7.35, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his right to a hearing;

(g) If the decision is made as described in § 7.39, a copy of the letter to the complainant transmitting that decision;

(h) If a hearing was held, the record of the hearing, together with the appeals examiner's findings, analysis, and recommended decision on the merits of the complaint; and

(i) A copy of the letter transmitting the decision.

APPEAL TO THE CIVIL SERVICE COMMISSION

§ 7.45 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Civil Service Commission the decision of the Department:

(1) To reject his complaint because it was not:

(i) Filed within required time limits (see § 7.31); or

(ii) Within the purview of the policy and procedures set forth in this subpart; or

(2) To cancel his complaint because of the complainant's:

(i) Failure to prosecute his complaint; or

(ii) Separation from the Department for reasons which are not related to his complaint; or

(3) On the merits of the complaint, as described in § 7.39 if the decision does not resolve the complaint to the satisfaction of the complainant.

(b) A complainant may not appeal to the Civil Service Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

§ 7.46 Where to appeal.

An appeal by a complainant must be filed by him or his representative in writing either personally or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

§ 7.47 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time up to 15 calendar days after his receipt of the letter transmitting the decision of the Department.

(b) The time limit stated in paragraph (a) of this section may be extended in the discretion of the Board of Appeals and Review of the Commission, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

§ 7.48 Appellate procedures.

The Board of Appeals and Review of the Commission shall review the complaint file of the Department and all relevant written representations made to the Board. However, there is no right to a hearing before the Board. The Board may remand a complaint to the Department for further investigation or a rehearing if the Board considers that action necessary, or have additional investigation conducted by Commission personnel. The provisions of this subpart apply to any further investigation or rehearing resulting from a remand from the Board. The Board shall issue a written decision setting forth its reasons for the decision and send copies thereof to the complainant, his designated representative, and the Department's Director of EEO. When corrective action is ordered, the Director of EEO shall report promptly to the Board that the corrective action has been taken. The decision of the Board is final and there is no further right to appeal.

§ 7.49 Appellate review by the Commissioners.

The Civil Service Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written arguments or evidence which tends to establish that:

(a) New and material evidence is available that was not readily available when the previous decision was issued.

(b) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(c) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

PART 10—PUBLICATIONS IN FEDERAL REGISTER

Sec.
10.1 Policy.
10.2 Scope.
10.3 Definitions.
10.4 Materials to be published.
10.5 Publication in advance of effective date.

AUTHORITY: The provisions of this Part 10 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 10.1 Policy.

It is the policy of the Department to formally promulgate its rules and regulations, to give to the public notice concerning them, and to afford, wherever practicable, to all who may be affected by them an opportunity to participate in their formulation through submission of written comments prior to their effective date.

§ 10.2 Scope.

This part identifies the materials which the Department will publish in the FEDERAL REGISTER.

§ 10.3 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Rules and regulations" means the formally promulgated statements of the Department which are of general applicability and future effect and designed to implement or interpret law or policy or describe the organization, procedure, or practice requirements of the Department, and which are required to be included in the Department's Unified Issuances System in the form of Handbooks, Circulars, or Guides.

(c) "Handbook" means compiled material of a permanent nature issued by the Department or an officer thereof for the guidance of its employees and program participants.

(d) "Circular" means material of a permanent nature dealing with a limited aspect of a subject, issued by the Department or an officer thereof pending its inclusion in a Handbook or Guide.

(e) "Guide" means material of a permanent though advisory nature.

(f) "Unified Issuances System" means the comprehensive system of the Department for dissemination of all formally promulgated statements that emanate from organizations in the Department. Formally promulgated statements of the Department which are of general applicability and future effect and designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the Department must be included in the Unified Issuances System in the form of Handbooks, Circulars, or Guides.

§ 10.4 Materials to be published.

There shall be published in the FEDERAL REGISTER all rules and regulations of the Department hereafter issued except those which it determines to be concerned solely with matters internal to the Department or to be of limited interest to the public.

§ 10.5 Publication in advance of effective date.

The Department is exempt from the rulemaking procedures of 5 U.S.C. 553 with respect to the majority of its programs and functions. However, it will, although not required to do so, voluntarily publish in the FEDERAL REGISTER its rules and regulations except those excepted in § 10.4 or in the last sentence of this § 10.5 at least 30 days before their effective date to afford interested persons an opportunity to participate in the formulation of the final language of such rules and regulations through submission of written data, views, or arguments. The Department will consider all relevant matter presented. The Department will not make such advance publication where the Secretary has determined in the particular case or class of cases that such advance publication and notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

PART 11—SEAL

§ 11.1 Seal.

In accordance with section 7(g) of the Department of Housing and Urban Development Act, requiring the Secretary to cause a seal of office to be made for the Department of Housing and Urban Development of such device as the Secretary shall approve, which seal shall be judicially noticed, I have caused to be made a seal the design of which accompanies and is made a part of this document, and which is described as follows: On a white background within a circle composed of the words, "U.S. Department of Housing and Urban Development," is an eagle and two stars. The six upper bars depicting the upper portion of the eagle's wings, the torso of the eagle, the star at the right of the eagle, and the words, "U.S. Department of Housing and Urban Development," are colored blue. The eight lower bars depicting the lower portion of the eagle's wings and the star at the left of the eagle are colored green.

(Sec. 7(g), 79 Stat. 670; 42 U.S.C. 3535(g))

PART 15—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Purpose and Policy

Sec.
15.1 Definitions.
15.2 Purpose.
15.3 Statement of Policy.

Subpart B—Production and Disclosure of Records

15.11 Publication in the FEDERAL REGISTER.
15.12 Materials not published in FEDERAL REGISTER.
15.13 Identifiable records produced upon request.
15.14 Schedule of fees.

Subpart C—Exemptions

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Subpart D—Where Records May Be Inspected and Obtained

15.31 Information centers.
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15.51 Authority to release records or copies.
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15.61 Administrative review.

Subpart H—Production in Response to Subpenas or Demands of Courts or Other Authorities

15.71 Purpose and scope.
15.72 Production prohibited unless approved by the Secretary.
15.73 Procedure in the event of a demand for production or disclosure.
15.74 Procedure in the event of an adverse ruling.

AUTHORITY: The provisions of this Part 15 issued under 5 U.S.C. 552 and sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

Subpart A—Purpose and Policy

§ 15.1 Definitions.

As used in this Part—

(a) "Act" means section 552 of Title 5, United States Code, as amended by Public Law 90-23, 81 Stat. 54, June 5, 1967. Public Law 90-23 repealed and superseded Public Law 89-487, 80 Stat. 250, July 4, 1966, sometimes referred to as the "Freedom of Information Act" or "Public Information Act."

(b) "Department" means the Department of Housing and Urban Development which consists of the Office of the Secretary and the several organizational units.

(c) "Secretary" means the Secretary of Housing and Urban Development.

(d) "Organizational unit" means any one of the several offices, staffs, divisions, or administrations of the Department, including the Government National Mortgage Association (GNMA) and the Federal Insurance Administration (FIA). "Organizational unit" also includes Department Regional Offices, Area Offices, and Insuring Offices.

(e) "Person" means "person" as defined in 5 U.S.C. 551(2) to include corporations and organizations as well as individuals.

(f) "Information center" means any place, reading room, desk, or other area or facility established and maintained by the Department where the public may request and obtain information and records concerning the Department's operations and business.

§ 15.2 Purpose.

This part contains the rules and regulations of the Department implementing 5 U.S.C. 552. It informs the public about where and how the Department's records and information may be obtained from its organizational units in Washington, D.C., and its regional and other local offices throughout the country.

§ 15.3 Statement of policy.

The Department's policy is one of full and responsible disclosure of its identifiable records and information consistent with such competing public interests concerning the national security, personal privacy, and obligations of confidentiality as are recognized by 5 U.S.C. 552. Every effort will be made to furnish service with reasonable promptness to the public with respect to the obtaining of records and information.

Subpart B—Production and Disclosure of Records

§ 15.11 Publication in the Federal Register.

Subject to the exemptions in § 15.21, the Department shall separately state and currently publish in the FEDERAL REGISTER for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the

nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department; and

(e) Each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the FEDERAL REGISTER and not so published. For purposes of this section, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Office of the Federal Register, as provided in 1 CFR Part 20.

§ 15.12 Materials not published in Federal Register.

(a) Subject to the exemptions in § 15.21, the Department, in accordance with this part, shall make available for public inspection and copying:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretations which have been adopted by the Department and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) To prevent a clearly unwarranted invasion of personal privacy, the Department may delete identifying details when it makes available or publishes any material. Whenever such deletions are required, the record or copy will be made available with the space formerly occupied by such identifying details left blank, and the justification for the deletion shall be explained fully in writing.

(c) The Department shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and which is required by this section to be made available or published.

§ 15.13 Identifiable records produced upon request.

Requests for records and copies may be made in person during normal business hours at information centers listed in § 15.31 of this part. Requests may also be made by mail addressed to such centers.

(a) Each request for a record or copy thereof should identify the record specifically with respect to names, dates, subject matter, and location, if known. The Department will notify any person making a request if further identifying information is needed before his request can be honored.

(b) Charges will be made in accordance with the schedule of fees set forth in § 15.14 for any records search which involves more than one man-hour of work, and for duplicating, reproducing, certifying, or authenticating copies of documents furnished.

(c) When a request is made for an identifiable record of the Department which has been stored in the National Archives or other record centers of the General Services Administration, such record will be requested by the Department if it otherwise would be available under this part.

(d) Every effort will be made to make a record in use by the staff of the Department available when requested, and such availability will be deferred only to the extent necessary to avoid serious interference with the business of the Department.

(e) Copies of a requested record need not be furnished if the record is published in the FEDERAL REGISTER or is available for purchase from the Superintendent of Documents of the Government Printing Office. Such records may, however, be examined in one of the Department's information centers.

§ 15.14 Schedule of fees.

For the services listed below performed in the location and disclosure or furnishing of copies of records under 5 U.S.C. 552, and pursuant to the policy established by Congress in 31 U.S.C. 483a, the following charges will apply:

(a) Records search:

(1) First man-hour on any single request: no fee.

(2) Each additional man-hour or fraction thereof: $5.

(b) Copies of documents:

(1) Xerox or equivalent, page size up to 8½ inches by 14 inches, per page: $0.25.

(2) Photostat, page size up to 8½ inches by 14 inches, per page: $1.

(c) If charge is less than $1.00 per order: no fee.

(d) Maximum number of copies furnished of any record: 10.

(e) Certification of true copies, each: $1.

(f) Attestation under the seal of the Department or GNMA, as the case may be, each: $2.

(g) Payment of fees under this section shall be made in cash, or by U.S. money order, or by certified bank check payable to the Treasurer of the United States. Postage stamps will not be accepted.

Subpart C—Exemptions

§ 15.21 Exemptions authorized by 5 U.S.C. 552.

A requested record shall not be withheld from inspection or copying unless it both (1) comes within one of the classes of records exempted by 5 U.S.C. 552, and (2) there is need in the public interest to withhold it. In determining the scope of the classes of records described in paragraph (a) of this section, the Attorney General's Memorandum on the Public Information Act, June 1967, will be used as a guide.

(a) The classes of records authorized to be exempted from disclosure by 5 U.S.C. 552 are those which concern matters that are:

(1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) Related solely to the internal personnel rules and practices of the Department;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Department;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Department in connection with its responsibility for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

Subpart D—Where Records May Be Inspected and Obtained

§ 15.31 Information centers.

(a) The Department maintains a Central Information Center in Washington, D.C., at the following location:

Department of Housing and Urban Development, 451 Seventh Street SW., Room 1202, Washington, D.C. 20410.

(b) The Department also maintains an information center—

(1) In each of its Regional Offices as follows:

Region I (Boston)—Room 800, John F. Kennedy Building, Boston, Mass. 02203.

Region II (New York)—26 Federal Plaza, New York, NY 10007.

Region III (Philadelphia)—Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.

Region IV (Atlanta)—645 Peachtree-Seventh Building NE., Atlanta, GA 30323.

Region V (Chicago)—360 North Michigan Avenue, Chicago, IL 60601.

Region VI (Fort Worth)—Federal Office Building, 819 Taylor Street, Fort Worth, TX 76102.

Region VII (Kansas City)—Room 300 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

Region VIII (Denver)—New Federal Building, 19th and Stout Streets, Denver, CO 80202.

Region IX (San Francisco)—450 Golden Gate Avenue, Post Office Box 36003, San Francisco, CA 94102.

Region X (Seattle)—3027 Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98102.

(2) With respect to the mortgage loan activities of GNMA, in each FNMA Regional Office as follows:

215 Penn Center Plaza, Philadelphia, PA 19103.
34 Peachtree Street NE., Atlanta, GA 30303.
1112 Commonwealth Edison Building, 72 West Adams Street, Chicago, IL 60603.
411 North Akard Street, Dallas, TX 75201.
3540 Wilshire Boulevard, Los Angeles, CA 90005.

(3) In each Area Office and each Insuring Office; for addresses see listings in local telephone directories under "United States Government".

§ 15.32 Information officers.

There shall be an information officer in each of the information centers described in § 15.31 who shall be responsible for making information and records available to the public in accordance with this part. The information officer in the Department Central Information Center shall be designated by the Director, Office of Public Affairs. The information officer in each Regional Office and field office shall be designated by the Regional Administrator or the Director of the office, as the case may be, with the concurrence of the Director, Office of Public Affairs.

§ 15.33 Material in Department Central Information Center.

(a) The Central Information Center shall contain or have ready access to the following as a minimum:

(1) FEDERAL REGISTER, Code of Federal Regulations, and regulations of the Department contained therein;

(2) Precedent final opinions and orders in the adjudication of cases;

(3) Administrative staff manuals which affect the public;

(4) Program manuals which affect the public and forms;

(5) Interpretations relied upon as precedents;

(6) A current index of the foregoing materials issued, adopted, or promulgated after July 4, 1967.

(b) The information center in each Regional Office, Area Office, and Insuring Office shall contain or shall have ready access to such of the above records as pertain to the activities of that office.

(c) Facilities shall be available to each information center for the copying of properly requested and available records.

Subpart E—Procedures for Requesting Access to Records

§ 15.41 Requests for records.

(a) Requests for identifiable records should be made at the established information centers.

(b) A request should specify the requested record by brief description, containing the name, number or date as applicable, in enough detail that the record can be identified and located. A reasonable time should be allowed for records to be located, copied, and mailed or otherwise delivered.

(c) The request should be accompanied by the fee or an offer to pay the fee when determined.

(d) Copies of available records shall be produced as promptly as possible. Copying service shall be limited to not more than 10 copies of any single page. Records which are published or available for sale need not be supplied.

Subpart F—Disclosure of Records and Refusal To Disclose

§ 15.51 Authority to release records or copies.

The head of each organizational unit or the designee of each of these officers, with respect to records pertaining to programs or activities for which each has primary responsibility, is authorized to release any Department record or copy thereof when disclosure is clearly appropriate under this part. Such authorized persons may release records for which another officer has primary responsibility only with the consent of the other officer or his designee.

§ 15.52 Authority to deny requests for records.

The officers and their designees described in the preceding § 15.51 may deny a request for a record. Any denial shall be promptly made in writing and contain a simple statement of reasons for the denial. Prior to a denial, the officer or designee shall clear the matter with the Office of General Counsel or the office of the appropriate Regional Counsel. Denial shall terminate the authority of the particular officer or designee to release or disclose the requested record, which thereafter may not be made available except with the express authorization of the Secretary or his designee.

Subpart G—Administrative Review of Denials of Requests for Records

§ 15.61 Administrative review.

(a) Review shall be available only from a written denial of a request for a record issued under § 15.52, and only if a written request for review is filed within 30 days after issuance of the written denial. The filing of a request for review may be accomplished by mailing to the Secretary of Housing and Urban Development, 451 Seventh Street SW., Room 10000, Washington, D.C. 20410, a copy of the request if in writing, a copy of the written denial issued under § 15.52, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the original request for the record. Review will be made promptly by the Secretary or his designee on the basis of the written record described in this § 15.61.

(b) The decision after review will be in writing, will be promptly communicated to the person requesting review, and will constitute final action of the Department on the request, subject to judicial review as provided in 5 U.S.C. 552(a)(3).

Subpart H—Production in Response to Subpenas or Demands of Courts or Other Authorities

§ 15.71 Purpose and scope.

This subpart contains the regulations of the Department concerning procedures to be followed when a subpena, order, or other demand (hereinafter referred to in this subpart as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Department, (b) any information relating to material contained in the files of the Department, or (c) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status. For the purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision of, the Secretary.

§ 15.72 Production prohibited unless approved by the Secretary.

No employee or former employee of the Department shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department, or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as a part of the performance of his official duties or because of his official status, without the prior approval of the Secretary.

§ 15.73 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department for the production of material or the disclosure of information described in § 15.71, he shall immediately notify the Secretary and either the General Counsel or the appropriate Regional Counsel. The "appropriate Regional Counsel" shall mean the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. If possible, the Secretary shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Secretary are received, the U.S. Attorney or such other attorney as may be designated for the purpose, will appear with the employee or former employee of the Department upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the Secretary. The court or other authority shall be requested respectfully to stay the demand pending

receipt of the requested instructions from the Secretary.

§ 15.74 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 15.73(b) pending receipt of instructions from the Secretary, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Secretary not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel. Touhy v. Ragen, 340 U.S. 462).

PART 17—ADMINISTRATIVE CLAIMS

Subpart A—Claims Against Government Under Federal Tort Claims Act

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Subpart A—Claims Against Government Under Federal Tort Claims Act

AUTHORITY: The provisions of this Subpart A issued under 28 U.S.C. 2672; 28 CFR 14.11; sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535 (d).

GENERAL PROVISIONS

§ 17.1 Scope; definitions.

(a) This subpart applies to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Department while acting within the scope of his office or employment.

(b) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 F.R. 10616; 28 CFR Part 14).

(c) For purposes of this subpart, the term "Department" means the Department of Housing and Urban Development, which consists of the Office of the Secretary and the several organizational units. "Organizational unit" means the jurisdictional area of each Assistant Secretary, each office head reporting directly to the Secretary, and each Regional Administrator.

PROCEDURES

§ 17.2 Administrative claim; when presented; appropriate HUD Office.

(a) For purposes of this subpart, a claim shall be deemed to have been presented when the Department receives, at a place designated in paragraph (b) of this section, an executed "Claim for Damages or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to the Department, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to the Department as of the date that the claim is received by the Department. If a claim is mistakenly addressed to or filed with the Department, the Department shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) A claimant shall mail or deliver his claim to the office of employment of the Department employee or employees whose negligent or wrongful act or omission is alleged to have caused the loss or injury complained of. Where such office of employment is the Department Central Office in Washington, or is not reasonably known and not reasonably ascertainable, claimant shall file his claim with the Assistant Secretary for Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. In all other cases, claimant shall address his claim to the head of the appropriate office, the address of which will generally be found listed in the local telephone directory.

§ 17.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 17.4 Administrative claim; evidence and information to be submitted.

(a) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the Department or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Department any other physician's report previously or thereafter made of the physical or mental condition which is the subject matter of his claim;

(2) Itemized bills for medical, dental, and hospital expenses incurred, or item-

ized receipts of payment for such expenses;

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment;

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost;

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost;

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(b) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation;

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death;

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death;

(5) Decedent's general physical and mental condition before death;

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses;

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death;

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership;

(2) A detailed statement of the amount claimed with respect to each item of property;

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs;

(4) A statement listing date of purchase, purchase price, and salvage value where repair is not economical;

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 17.5 Investigations.

The Department may investigate, or may request any other Federal agency to investigate, a claim filed under this subpart.

§ 17.6 Claims investigation.

(a) When a claim has been filed with the Department, the head of the organizational unit concerned or his designee shall designate one employee in that unit who shall act as, and who shall be referred to herein as, the Claims Investigating Officer for that particular claim. When a claim is received by the head of an organizational unit to which this subpart applies, it shall be forwarded with or without comment to the designated Claims Investigating Officer, who shall:

(1) Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property;

(2) Ascertain the extent of loss or damage to the claimant's property;

(3) Assemble the necessary forms with required data contained therein;

(4) Prepare a brief statement setting forth the facts relative to the claim, a statement whether the claim satisfies the requirements of this subpart, and a recommendation as to the amount to be paid in settlement of the claim;

(5) Submit such forms, statements, and all necessary supporting papers to the head of the organizational unit having jurisdiction over the employee involved, who will be responsible for assuring that all necessary data has been obtained for the file. The head of the organizational unit will transmit the entire file to the General Counsel.

§ 17.7 Authority to adjust, determine, compromise, and settle claims.

The General Counsel, the Deputy General Counsel, and such employees of the Office of the General Counsel as may be designated by the General Counsel, are authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, 28 U.S.C. 2671, and the regulations contained in 28 CFR Part 14 and in this subpart.

§ 17.8 Limitations on authority.

(a) An award, compromise, or settlement of a claim under section 2672 of title 28, United States Code, and this subpart in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when, in the opinion of the General Counsel or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party, and the Department is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled only after consultation with the Department of Justice when the Department is informed or is otherwise aware that the United States or an officer, employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 17.9 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 17.8, the referral or request shall be transmitted to the Department of Justice by the General Counsel of the Department or his designee.

§ 17.11 Final denial of claim.

Final denial of an administrative claim shall be in writing, and notification of denial shall be sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 17.12 Action on approved claim.

(a) Payment of a claim approved under this subpart is contingent on claimant's execution of (1) a "Claim for Damage or Injury," Standard Form 95; (2) a claims settlement agreement; and (3) a "Voucher for Payment," Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any officer or employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Subpart B—Collection of Claims by the Government Under the Federal Claims Collection Act of 1966

AUTHORITY: The provisions of this Subpart B issued under sec. 3, 80 Stat. 309; 31 U.S.C. 952; 4 CFR Parts 101–105.

§ 17.20 Scope; definitions.

(a) *Scope.* This subpart sets forth the regulations of the Secretary of Housing and Urban Development implementing the Federal Claims Collection Act of 1966 (the Act), in conformity with the standards jointly promulgated by the Attorney General and the Comptroller General in 4 CFR Parts 101 through 105. The Act (1) requires the Secretary or his designee to attempt collection of all claims of the United States for money or property arising out of the activities of the Department; and (2) authorizes the Secretary or his designee to compromise such claims that do not exceed $20,000 exclusive of interest, or to suspend or terminate collection action where it appears that no person liable on such claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting such claim is likely to exceed the amount of recovery.

(b) *Definitions.* For purposes of this subpart, "office" means the organization of each Assistant Secretary, the Federal Insurance Administrator, the Government National Mortgage Association, the Community Development Corporation, and each Regional Office, Area Office and Insuring Office.

§ 17.21 Incorporation of joint standards by reference.

All administrative actions to collect claims arising out of the activities of the Department shall be performed in accordance with the applicable standards prescribed in 4 CFR Parts 101 through 105, which are incorporated by reference and supplemented in this subpart.

§ 17.22 Subdivision and joining of claims.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one not exceeding $20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single claims in a demand upon a particular debtor for payment totaling more than $20,000 does not preclude compromise or termination of collection action with respect to any one of such claims that does not exceed $20,000 exclusive of interest.

§ 17.23 Authority of offices to attempt collection of claims.

Each office of the Department shall attempt to collect in full all claims of the Department for money or property arising out of the activities of the office. Each office shall designate a claims collection officer, who shall assemble complete information concerning each claim at the time it accrues and currently maintain the file.

§ 17.24 Referral of claims to the General Counsel.

(a) *Authority of the General Counsel.* The General Counsel shall exercise the powers and perform the duties of the Secretary to compromise, or to suspend or terminate collection action on, all Department claims not exceeding $20,000 exclusive of interest, except as provided in § 17.25 and paragraph (b) of this section. When initial attempts at collection by the office having responsibility for such claims have not been fully successful, the claim file shall be forwarded to the General Counsel for further administrative collection procedures. Claims shall be referred to the General Counsel well within the applicable statute of limitations (28 U.S.C. 2415 and 2416), but in no event more than 2 years after the claims accrued.

(b) *Exclusions.* There shall be no compromised or terminated collection action with respect to any claim: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the antitrust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such claims shall be promptly referred to the Justice Department or GAO, as appropriate.

§ 17.25 Authority of offices to compromise claims or suspend or terminate collection action.

(a) *Small claims.* Where it appears that the cost of collecting a claim of less than $400 will exceed the amount of recovery, the claims collection officer is authorized to compromise the claim or to terminate collection action.

(b) *Claims arising under certain programs.* The office primarily responsible for the following programs of the Department is authorized, in those cases where initial collection attempts are not wholly successful, to compromise or to suspend or terminate collection action on claims not exceeding $20,000 with respect to:

(1) A claim on a property improvement loan account under title I of the National Housing Act;

(2) A claim on a rehabilitation loan account under section 312 of the Housing Act of 1964;

(3) A claim against tenants or former tenants of properties acquired by, or under the custody of, the Secretary or held by him as mortgagee in possession; or

(4) A claim arising out of the operational (nonadministrative) activities of the Government National Mortgage Association (GNMA).

However, no office shall undertake to compromise or terminate any collection action excluded under § 17.24(b).

§ 17.26 Department Claims Officer.

The General Counsel shall designate an employee of the Office of General Counsel as Department Claims Officer, who shall be responsible for establishing an efficient, modern claims collection system in the Department. The Department Claims Officer will supervise and train employees of a collection unit in the General Counsel's Office and coordinate collection activities of the Department offices.

§ 17.27 Claims files.

Each claims collection officer is responsible for obtaining current credit data about each person against whom a claim is pending in his office. The file shall be kept reasonably up to date by the Department Claims Officer for claims referred to the General Counsel for collection. Such credit data may take the form of (a) a commercial credit report, (b) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (c) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (d) an audited balance sheet of a corporate debtor. The file should also contain a checklist or brief summary of actions taken to collect or compromise a claim.

§ 17.28 Monthly report of collection action.

The Department Claims Officer shall make a monthly report to the General Counsel and all offices that have referred claims for collection. The report should contain the following information as a minimum:

(a) All outstanding claims referred to the General Counsel for administrative collection, including the name and address of the debtor, the amount of the claim, the date the claim accrued, the basis of the claim, the office referring the claim, and the current progress of collection activities.

(b) All claims compromised or on which collection has been suspended or terminated or referred to GAO or Justice for further collection action during the month. The collection action taken and the basis for the action should be indicated.

(c) All claims referred to the Department of Justice under § 17.24(a).

(d) Claims returned to this Department by the Justice Department for further collection action because Justice's handling was not warranted.

§ 17.29 Accounting control.

Each office and the Department Claims Officer shall process all claims collections through the appropriate accounting office and report the collection, compromise, suspension and termination of all claims to the appropriate accounting office for recording.

§ 17.30 Record retention.

The file of each claim on which administrative collection action has been completed shall be retained by the appropriate office or the General Counsel not less than 1 year after the applicable statute of limitations has run.

§ 17.31 Suspension or revocation of eligibility.

(a) Where a contractor, grantee, or other participant in programs sponsored by the Department fails to pay his debts to the Department within a reasonable time after demand, the fact shall be reported by the General Counsel to the Director, Office of Investigation, who shall place such defaulting participant's name on the Department's list of debarred, suspended and ineligible contractors and grantees and the participant will be so advised.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the General Counsel who shall so advise the Treasury Department. The Treasury Department will notify this Department when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

§ 17.32 Standards for collection of claims.

(a) *Demand for payment.* Appropriate written demands shall be made upon the debtor which shall include information relating to the consequences of his failure to cooperate.

(b) *Collection by offset.* Collection by offset will be administratively undertaken on claims which are liquidated or certain in amount in every instance where this is feasible.

(c) *Liquidation of collateral.* Where the Department holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

(d) *Collection in installments.* Claims with accrued interest should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments.

(e) *Interest.* Where prejudgment interest is not mandated by statute, contract or regulation, the interest shall be assessed at 7 percent. Prejudgment interest may be waived as an inducement to voluntary payment. In such cases demand letters should inform the debtor that prejudgment interest will be collected if suit becomes necessary. When a debt is paid in installments and interest is collected, installment payments will first be applied to the payment of accrued interest and then to principal in accordance with the so-called "U.S. Rule" unless a different rule is prescribed by statute, contract or regulation. Prejudgment interest shall not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest.

(f) *Omission not a defense.* Failure to comply with any standard prescribed in 4 CFR Chapter II or in this subpart shall not be available as a defense to any debtor.

§ 17.33 Standards for compromise of claims.

(a) *Compromise offer.* An offer to compromise may be accepted (1) if there is real doubt concerning the Department's ability to prove its case in court for the full amount claimed; (2) if the cost of collecting the claim does not justify the enforced collection of the full amount; (3) if in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the Department's enforcement policy will be adequately served by acceptance of the sum to be agreed upon, or (4) for other reasons deemed valid by the General Counsel (or other designee) and made a part of the claim record.

(b) *Documentary evidence of compromise.* No compromise of a claim shall be final or binding on the Department unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

§ 17.34 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* Collection action shall be suspended temporarily on a claim when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, having consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is presently unable to make payment on the Department's claim or effect a compromise, but his future prospects justify retention of the claim for periodic review and action and (1) the applicable statute of limitations has been tolled or started anew or (2) future collection can be effected by offset notwithstanding the statue of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

(b) *Termination of collection action.* Collection action may be terminated and the Department file closed for the following reasons: (1) No substantial amount can be collected; (2) the debtor cannot be located; (3) the cost will exceed recovery; (4) the claim is legally without merit; or (5) the claim cannot be substantiated by evidence.

§ 17.35 Referral to GAO or Justice Department.

(a) *Claims referred.* Claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 101 to 105 will be referred to the General Accounting Office in accordance with 31 U.S.C. 71 or to the Department of Justice if this Department has been granted an exception from referrals to the General Accounting Office. Also, if there is doubt as to whether collection action should be suspended or terminated on a claim, the claim may be referred to the General Accounting Office for advice. When recovery of a judgment is prerequisite to imposition of administrative sanctions, the claim may be referred to the Justice Department for litigation even though termination of collection activity might otherwise be considered.

(b) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action, and in any event, well within the statute of limitations for bringing suit against the debtor.

Subpart C—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

AUTHORITY: The provisions of this Subpart C issued under sec. 3, 78 Stat. 767; 31 U.S.C. 241; sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 17.40 Scope and purpose.

(a) This subpart applies to all claims filed by or on behalf of employees of the Department of Housing and Urban Development for loss of or damage to personal property which occurs incident to their service with HUD under the Military Personnel and Civilian Employees' Claims Act of 1964. A claim must be substantiated and the possession of the property determined to be reasonable, useful, or proper. The maximum amount that can be paid under any claim under the Act is $6,500 and property may be replaced in kind at the option of the Government. Nothing in this subpart shall be construed to bar claims payable under statutory authority.

(b) HUD is not an insurer and does not underwrite all personal property losses that an employee may sustain. Employees are encouraged to carry private insurance to the maximum extent practicable to avoid large losses or losses which may not be recoverable from HUD. The procedures set forth in this section are designed to enable the claimant to obtain the maximum amount of compensation for his loss or damage. Failure of the claimant to comply with these procedures may reduce or preclude payment of his claim under this subpart.

§ 17.41 Claimants.

(a) A claim pursuant to this subpart may only be made by:

(1) An employee of HUD.

(2) A former employee of HUD whose claim arises out of an incident occuring before his separation from HUD.

(3) Survivors of a person named in subparagraph (1) or (2) of this paragraph, in the following order of precedence:

(i) Spouse.
(ii) Children.
(iii) Father or mother, or both.
(iv) Brothers or sisters, or both.

(4) The authorized agent or legal representative of a person named in subparagraphs (1), (2), and (3) of this paragraph.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 17.42 Time limitations.

A claim under this part may be allowed only if:

(a) Except as provided in paragraph (b) of this section, it is filed in writing within 2 years after accrual. For purposes of this part, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

(b) It cannot be filed within the time limits of paragraph (a) of this section, because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, and if it is filed not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier.

§ 17.43 Allowable claims.

(a) A claim may be allowed only if:

(1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his agent, the members of his family, or his private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this part shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with HUD may be considered and allowed. The following are examples of the principal types of claims which may be allowed, but these examples are not exclusive and other types of claims may be allowed, unless excluded by §§ 17.44 and 17.45:

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 States or the District of Columbia that were assigned to the claimant or otherwise provided in kind by the United States;

(ii) Quarters outside the 50 States and the District of Columbia that were occupied by the claimant, whether or not they were assigned or otherwise provided in kind by the United States, except when the claimant is a civilian employee who is a local inhabitant; or

(iii) Any warehouse, office, working area, or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of subparagraph (2) of this paragraph (c). Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to, or loss of, tires mounted on mobile homes will not be allowed, except in cases of collision, theft, or vandalism.

(4) *Enemy action or public service.* Claims may be allowed for damage to, or loss of, property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(5) *Property used for benefit of the Government.* Claims may be allowed for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority.

(6) *Clothing and accessories.* Claims may be allowed for damage to, or loss of, clothing or accessories customarily worn on the person, such as eyeglasses, hearing aids, or dentures.

§ 17.44 Restrictions on certain claims.

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency.* Claims may be allowed for loss of money or currency only when lost incident to fire, flood, hurricane, other natural disaster, or by theft from quarters (as limited by paragraph (a) of § 17.45). In instances of theft from quarters, it must be conclusively shown that the quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to an amount which is determined to have been reasonable for the claimant to have had in his possession at the time of the loss.

(b) *Government property.* Claims may only be allowed for property owned by the United States for which the claimant is financially responsible to any agency of the Government other than HUD.

(c) *Estimate fees.* Claims may include fees paid to obtain estimates of repair only when it is clear that an estimate could not have been obtained without paying a fee. In that case, the fee may be allowed only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and other motor vehicles.* Claims may only be allowed for damage to, or loss of, automobiles and other motor vehicles if:

(1) Such motor vehicles were required to be used for official Government business (official Government business, as used here, does not include travel, or parking incident thereto, between quarters and office, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and assigned place of duty specifically authorized by the employee's supervisor as being more advantageous to the Government); or

(2) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 17.46.

§ 17.45 Unallowable claims.

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters occupied by the claimant within the 50 States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed, or transported in violation of law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken by claimant.

(f) *Minimum amount.* Loss or damage amounting to less than $10.

§ 17.46 Claims involving carriers or insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within 9 months of the date that delivery was made, or within 9 months of the date that delivery should ordinarily have been made.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit his claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of his claim is made by the carrier or insurer.

(1) Upon submitting his claim, he will certify in his claim that he has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If final action has not been taken by the carrier or insurer on his claim, he will immediately notify them to address all correspondence in regard to his claim to him, in care of the General Counsel of HUD.

(3) The claimant shall advise the General Counsel of any action taken by the carrier or insurer on his claim and upon request shall furnish all correspondence documents, and other evidence pertinent to the matter.

(e) The claimant will assign to the United States to the extent of any payment on his claim accepted by him, all his right, title and interest in any claim he may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. After payment of his claim by the United States, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by him from the United States.

(f) Where a claimant recovers for the loss from the carrier or insurer before his claim under this subpart is settled, the amount or recovery shall be applied to his claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this part, no compensation is allowable under this part.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the $6,500 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds $6,500, the claimant will be allowed only $6,500.

§ 17.47 Settlement of claims.

(a) The General Counsel, HUD, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on his claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 17.46 has not been settled before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to HUD to the extent HUD has paid such to claimant in settlement.

§ 17.48 Computation of amount of award.

(a) The amount allowed for damage to or loss of any item of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange); and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under subparagraph (1) of this paragraph.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in kind whenever appropriate.

§ 17.49 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

§ 17.50 Claims procedures.

(a) Applicants shall file claims in writing with the General Counsel, Department of Housing and Urban Development, Washington, D.C. 20410.

(b) Each written claim shall contain, as a minimum—

(1) Name, address, place of employment of claimant.

(2) Place and date of loss or damage.

(3) A brief statement of the facts and circumstances surrounding loss or damage.

(4) Cost, date, and place of acquisition of each piece of property lost or damaged.

(5) Two itemized repair estimates, or value estimates, whichever is applicable.

(6) Copies of police reports, if applicable.

(7) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved.

(8) With respect to claims involving property being used for the benefit of the Government, a statement by the employee's supervisor evidencing that the claimant was required to provide such property or that his providing it was in the interest of the Government.

(9) Other evidence as may be required by the General Counsel.

PART 24—DEBARMENT, SUSPENSION, AND INELIGIBILITY OF CONTRACTORS AND GRANTEES

Sec.
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AUTHORITY: The provisions of this Part 24 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 24.0 Policy.

(a) In order that this Department may realize the goal of a decent home and a suitable living environment for every American family, it is necessary that grants and contracts awarded by the Department and by those entities with whom it does business be made only to those contractors and grantees which can demonstrate that Government funds will be properly utilized. Department policy requires, therefore, that awards may be made only to responsible contractors and grantees. In evaluating past performance of participants in programs administered by the Department, as well as other relevant aspects of the record and status of the participants, the criteria for debarment and suspension shall be uniform.

(b) It is recognized that each Department office requires certain latitude to function effectively in this area. Each office may accordingly implement these regulations by appropriate guidelines which prescribe auxiliary procedures not inconsistent with this part and which have been approved, prior to adoption, by the Office of General Counsel.

§ 24.1 Scope.

This part prescribes procedures relating to:

(a) The debarment of contractors and grantees for cause;

(b) The suspension of contractors and grantees for cause under prescribed conditions;

(c) The placement of contractors and grantees in ineligibility status when they are included in lists which make their participation in federally assisted programs illegal;

(d) Use of Adverse Information Reports to identify contractors and grantees having unfavorable performance records; and

(e) Reconsideration of debarment and suspension.

§ 24.2 Authority.

This part is issued under section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 24.3 Applicability.

(a) This part applies to (1) contracts in accordance with 41 CFR, Chapter I, for procurement of property, nonpersonal services (including construction), and personal services (41 CFR § 1–3.204); (2) HUD assisted contracts; (3) public and private organizations and individuals who are contractors with or grantees of the Department and to all who receive HUD funds from such contractors or grantees; (4) and participants, or contractors with participants, in programs where HUD is the guarantor or insurer.

(b) This part does not apply to (1) contracts with, or grants made to, owners or occupants of real property in connection with the acquisition of such real property, or any interest therein, by a public entity for a HUD assisted program or project where such entity possesses the power of eminent domain; or (2) relocation payments.

§ 24.4 Definitions.

(a) "Debarment" means, in general, an exclusion from participation in HUD programs for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance. However, in connection with Executive Order 11246 on Equal Employment Opportunity, the term debarment also means an exclusion from contracting or subcontracting for an indefinite period of time pending the elimination of the circumstances for which the exclusion was imposed.

(b) "Suspension" means a disqualification from participation in HUD programs for a temporary period of time because a contractor or grantee is suspected upon adequate evidence of engaging in criminal, fraudulent, or seriously improper conduct.

(c) "Placement in ineligibility status" means a disqualification from participation in HUD programs pending the elimination of the circumstances which constitute the basis for imposition of the disqualification.

(d) "Affiliates." Business concerns are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

(e) "Consolidated List." A list of all contractors and grantees against whom any or all of the measures referred to in this part have been invoked. It includes past performance data and the status of participant on any debarment, suspension, or ineligibility list.

(f) "Adverse Information Report." A record of contractors and grantees whose performance has been unsatisfactory under auxiliary procedures established by the offices of the Assistant Secretaries.

(g) "Contractors or grantees." Individuals and public or private organizations that are direct recipients of HUD funds or that receive HUD funds indirectly through non-Federal sources; all participants, or contractors with participants, in programs where HUD is the guarantor or insurer; and Federally assisted construction contractors.

(h) "Financial assistance." Assistance through grant or contractual arrangements; assistance in the form of loans, loan guarantees or insurance; and in addition, award of procurement contracts, notwithstanding any quid pro quo given.

§ 24.5 General.

(a) Debarment, suspension, and placement in ineligible status are measures which may be invoked by offices of the Department either to exclude or to disqualify contractors and grantees from participation in Department programs. These measures shall be used for the purpose of protecting the public and are not for punitive purposes. To assure the Department of benefits to be derived from the full and free competition of interested contractors and grantees, these measures should not be instituted for any time longer than deemed necessary, and should generally preclude awards only for the duration of the period of nonresponsibility.

(b) Department action to exclude or to disqualify contractors and grantees from participation in its programs, or to reconsider such measures, shall be based upon all available relevant facts. Department investigation required to elicit such facts and related evidence shall be conducted by the Office of Investigation or by such other office as has been assigned investigative authority.

(c) In any instance where Department action under these regulations results in an applicant's being denied financial assistance on the basis of his previous conduct with the Department, the applicant is entitled to a hearing in accordance with paragraphs (b) (2) and (3) of § 24.10 regardless of the procedure which has been applied to effect such denial: *Provided*, That the applicant has exhausted all other available procedures for reinstatement with respect to the program under which assistance was denied.

(d) Where an Assistant Secretary has authority under this part to act or make a determination, he may delegate all or part of this authority.

§ 24.6 Establishment and maintenance of lists of contractors and grantees debarred, suspended, declared ineligible; auxiliary lists.

(a) The Director, Office of Investigation, shall be responsible for maintenance and consolidation of Department lists relating to debarment, suspension, and ineligibility and any Adverse Information Reports furnished by the Assistant Secretaries. He shall further maintain debarment lists of other Government

agencies which this Department is required by law and Executive order to observe.

(b) Each Assistant Secretary shall advise the Director, Office of Investigation, of additions or deletions to be made in the lists maintained by the Office of Investigation. Such lists shall be periodically reviewed by the General Counsel to assure that the criteria, procedures, and standards included in these regulations are observed.

(c) The Director, Office of Investigation, shall, in cooperation with the offices of the Department and the Office of ADP Systems Management and Operations, establish automative procedures for assuring that effective and timely reference checks may be made by designated officials.

(d) The General Counsel, in cooperation with the Assistant Secretaries, shall determine the necessity for and degree of restriction imposed on circulation to non-Federal entities of the lists maintained by the Office of Investigation and correspondence relating to such lists. If the General Counsel determines a list shall be so restricted, the Director, Office of Investigation, shall establish rules for handling such list. Lists shall be marked "For Official Use Only."

(e) All lists shall be kept current. Procedures for issuance of notices of additions and deletions shall be established by the Director, Office of Investigation, in cooperation with the Office of ADP Systems Management and Operations. Each Assistant Secretary shall appoint a liaison officer responsible for providing the Office of Investigation with current information.

(f) The Consolidated List shall show as a minimum the following information where applicable: (1) The names of those contractors and grantees debarred, suspended, or ineligible (in alphabetical order) with appropriate cross reference where more than one name is involved in a single transaction; (2) the basis of authority for each action; (3) the extent of restrictions imposed; and (4) the termination date for each listing. Within 30 days after the issuance of these regulations, each Assistant Secretary shall transmit to the Director, Office of Investigation, any debarment, suspension and ineligiblity lists (including the above-mentioned information) which relate to his program area.

(g) The Director, Office of Investigation, shall arrange for reproduction and distribution of the Consolidated List. Publication shall be in accordance with entries made under § 24.7. Distribution of such list among Department employees shall be made to those whose duties require access to the list as authorized by the Assistant Secretaries having respective jurisdiction of such employees. Names and dates of debarment, suspension, or ineligibility contained in the Consolidated List will be available upon request to those who require such information in their relations with contractors and grantees; further information contained in such list shall only be distributed to those deemed eligible by the General Counsel under paragraph (d) of this section.

(h) Procedures for submitting requests for information contained in the Consolidated List and distribution of such information shall be established by the Office of Investigation in cooperation with the Office of ADP Systems Management and Operations.

(i) Following publication of these regulations and as soon as practicable, the Office of ADP Systems Managment and Operations shall conduct a feasibility study in connection with the inclusion in the ADP system of information contained in the Consolidated List.

§ 24.7 Bases for entry.

Entry shall be made on the debarred, suspended, and ineligible list of contractors and grantees on the following bases:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that Act.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)), as found by the Comptroller General to have violated said Act.

(c) Those listed by the Comptroller General in accordance with the provisions of Part 5, § 5.6(b) of the regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan 14 of 1950, as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provision of any statutes including the following:

(1) Davis-Bacon Act (40 U.S.C. 276a).

(2) Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276 b, c).

(3) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330).

(4) National Housing Act (12 U.S.C. 1703).

(5) Hospital Survey and Construction Act (42 U.S.C. 291).

(6) Airport and Airway Development Act of 1970 (49 U.S.C. 1701).

(7) Housing Act of 1949 (42 U.S.C. 1401).

(8) School Survey and Construction Act of 1950 (20 U.S.C. 251).

(9) Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1501, 1591).

(10) Federal Civil Defense Act of 1950 (50 App. U.S.C. 2281(i)).

(11) Area Redevelopment Act of 1961 (42 U.S.C. 2518).

(12) Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).

(13) Health Professions Educational Assistance Act of 1963 (sec. 721, 77 Stat. 167).

(14) Mental Retardation Facilities Construction Act (secs. 101, 122, 135, 77 Stat. 282, 284, 288).

(15) Community Mental Health Centers Act (sec. 205, 77 Stat. 292).

(d) Those debarred by the Secretary of Labor, or by the Secretary of this Department with the approval of the Secretary of Labor, under Executive Order 11246 as amended by Executive Order 11375 on Equal Employment Opportunity from participation in Government, or federally assisted construction, contracting or subcontracting by reason of noncompliance with the Equal Opportunity clause.

(e) Those the Department has determined to debar or suspend for cause under the conditions and procedures set forth in §§ 24.9 and 24.10.

(f) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b (b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provision required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

(g) Those found by the Secretary of Labor to have breached an agreement or representation that they are "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)) unless the Secretary of Labor has otherwise recommended under section 3 of such Act.

(h) Those who have failed to pay their debts to the Department within a reasonable period of time after a written demand for payment has been made in accordance with 4 CFR Part 102, Standards for the Administrative Collection of Claims and implementing HUD regulations in Part 17 of this subtitle.

§ 24.8 Treatment to be accorded contractors or grantees in debarred, suspended, or ineligible status.

Contractors or grantees listed as debarred, suspended, or ineligible shall be treated as follows:

(a) *Total restrictions.* Department funds shall not be expended for financial assistance to a contractor or grantee that is listed on the basis of § 24.7 (a), (b), (d), or (e); § 24.9(a) (1), (2), (3), (4), (5), (6), or (8); or to any concern, corporation, partnership, or association in which the former contractor or grantee has a substantial interest, nor shall bids or proposals be solicited therefrom. (*Provided,* under section 303(b)(2) of Executive Order 11246, debarment of an applicant is limited to the program with respect to which the noncompliance occurred.)

(b) *Restrictions under statutes designated in the regulations of the Secretary of Labor.* A contractor listed on the basis of § 24.7(c), or any concern, corporation, partnership, or association in which such contractor has a controlling interest, shall be ineligible for a period of 3 years (from the date of publication by the Comptroller General) to participate in any contracts subject to any of the statutes listed in § 24.7.

(c) *Buy American Act restrictions.* As specified in the Buy American Act (41 U.S.C. 10b(b)), contracts supported by Department funds shall not be awarded to contractors and grantees listed on the basis of § 24.7(f) for construction, alteration, or repair of public works in the continental United States or elsewhere.

(d) *Ineligibility restrictions of the Walsh-Healey Act.* Contracts supported by Department funds shall not be awarded to a contractor or grantee in any amount exceeding $10,000 for those materials, supplies, articles, or equipment with respect to which the contractor or grantee has geen found to be ineligible to be awarded a contract by the Secretary of Labor, as provided in § 24.7(g). However, contractors or grantees on this basis may, in the discretion of the Department, be awarded such contracts and may be solicited for bids or proposals, for (1) such materials, supplies, articles, or equipment when the amount does not exceed $10,000; (2) services regardless of amount; and (3) commodities in which the contractor or grantee has not been declared ineligible, regardless of amount.

(e) *Restrictions on subcontracting.* Where a contractor or grantee listed on the debarred bidders' list is proposed as a subcontractor, the contracting officer or program officer should decline to approve subcontracting with that contractor or grantee unless it is determined by the Department to be in the best interest of the Government to do so. Such determination shall in no event be made in the case of debarment under §24.7(d).

§ 24.9 Causes and conditions applicable to determination of debarment.

Subject to the following conditions, the Department may debar a contractor or grantee in the public interest for any of the following causes:

(a) *Causes.* (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(2) Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the Department to be so serious as to justify debarment action:

(i) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract.

(ii) A record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided,* That such failure or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar. Failure to perform or unsatisfactory performance caused by acts beyond the control of the firm or individual as a contractor shall not be considered to be a basis for debarment.

(iii) Violation of the contractual provision against contingent fees.

(iv) Acceptance of a contingent fee, which is paid in violation of the contractual provision against contingent fees.

(v) Violation of the contractual provision requiring affirmative action to provide equal opportunity in the participant's own employment practices.

(4) Any other cause of such serious compelling nature, affecting responsibility, as may be determined in writing by the Secretary or his duly authorized representative to warrant debarment. Such determination shall clearly demonstrate that participation by the contractor or grantee would be harmful to the best interests of the public.

(5) Debarment by some other executive agency.

(6) Those debarred by procedures prescribed by section 512 of the National Housing Act.

(7) Those found by the Secretary, after hearing and in accordance with procedural requirements of implementing regulations, to have violated title VI of the Civil Rights Act of 1964. (Title VI and implementing regulations limit a withholding of financial assistance to the particular program, or part thereof, where the noncompliance occurred.)

(8) Those found by the Secretary to have violated any rule, regulation, or procedure issued or adopted pursuant to Executive Order 11063, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure.

(b) *Conditions.* (1) Debarment for any of the causes set forth in paragraph (a) of this section shall be made only upon approval of the Secretary or his duly authorized representative.

(2) The existence of any of the causes set forth in paragraph (a) of this section does not necessarily require that a contractor or grantee be debarred. In each instance, whether the offense or failure, or inadequacy of performance, be of a criminal, fraudulent, or other serious nature, the decision to debar shall be made within the discretion of the Department and shall be rendered in the best interests of the Government. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether debarment is warranted.

(3) The existence of a cause set forth in paragraph (a) (1) and (2) of this section shall be established by criminal conviction by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in a reversal of the conviction, the debarment shall be removed upon the party's request (unless other cause for debarment exists).

(4) The existence of a cause set forth in paragraph (a) (3) and (4) of this section shall be established upon the evidence presented as determined by the Department and consistent with pertinent statutes and regulations.

(5) Debarment for the cause set forth in paragraph (a) (5) of this section (debarment by another agency) shall be proper provided that one of the causes for debarment set forth in paragraph (a) (1) through (4) of this section was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

(c) *Period of debarment.* (1) Debarment of a contractor or grantee for causes other than failure to comply with the provisions of Executive Order 11246 on Equal Employment Opportunity (see § 24.7(d)), or with title VI of the Civil Rights Act of 1964 (see paragraph (a)(7) of this section), shall be as a general rule for a period not to exceed 3 years. However, when debarment for an additional period is deemed necessary by the appropriate Assistant Secretary to protect Department interests and is consistent with applicable law, notice of the proposed additional debarment shall be furnished to that contractor or grantee in accordance with §24.10. Except as otherwise provided by statute, a debarment may be removed or the period thereof may be reduced by the appropriate program officer, with the approval of the Assistant Secretary, upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed.

(2) Debarment of an organization or individual for failure to comply with the provisions of Executive Order 11246 on Equal Employment Opportunity or title VI of the Civil Rights Act of 1964, shall continue until removed in accordance with those authorities and applicable regulations.

§ 24.10 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* When the Department seeks to debar a contractor or grantee (or any affiliate thereof), that party shall be served with written notice by registered or certified mail, return receipt requested, from the program officer proposing the action: (1) Stating that debarment is being considered, (2) setting forth the reasons for the proposed debarment, and (3) indicating that such party will be accorded an opportunity for a hearing if he so requests within 10 days from his receipt of notice, and that he may be represented by counsel.

(b) *Hearing request*—(1) *Request for hearing.* Any contractor or grantee that has been notified of a proposed action is entitled to request an opportunity to be heard and to be represented by counsel. A hearing request shall be made in writing addressed to the program officer proposing the action. If at the end of such 10-day period no request has been received, the officer may assume that an opportunity to be heard is not desired,

and may proceed to make a final determination and so notify the interested party.

(2) *Hearing; time and place.* Upon receipt of a request for an opportunity to be heard, the program officer shall arrange a timely hearing. Notice of the time and place of such hearing shall be in writing, transmitted by registered or certified mail, return receipt requested, and shall include a statement indicating the informal nature of the proceedings and their purpose. It shall be within the discretion of the appropriate Assistant Secretary to determine the hearing place.

(3) *Determination.* Hearings shall be conducted by a Hearing Officer of the Department who shall be responsible for the fair and expeditious conduct of proceedings. The program office shall be represented by the General Counsel or his designee. A record shall be made of the proceeding and shall be made available to the parties upon request. After the contractor or grantee against whom action is proposed has been afforded an opportunity to be heard, the Hearing Officer shall make an initial written determination on the evidence presented. The Hearing Officer's determination shall be final unless reversed or modified within 30 days by the appropriate Assistant Secretary. Each determination shall become a part of the record. Notice of the final determination shall be given in writing, signed by the Assistant Secretary, and transmitted by registered or certified mail, return receipt requested. The determination shall be conclusive.

(4) *Rescission and reinstatement.* Any contractor or grantee debarred from the benefits of participation may in writing request reinstatement any time after 6 months from the date of the debarment determination. The procedures for reinstatement are substantially similar to those invoked in the initial proceedings. However, conduct of the proceedings shall be the responsibility of the program officer. His determination to reinstate shall be subject to the approval of the appropriate Assistant Secretary. In reaching his determination regarding reinstatement, the program officer must be satisfied that the original wrongful act has been righted and also be persuaded from the assurances of the party concerned that he understands the requirements of the statutes and the administrative rules and regulations and that he will comply with them in the future. When a debarment has been rescinded, a report thereof shall be forwarded by the program officer to the Director, Office of Investigation, who shall forward notice of reinstatement to the party so reinstated.

(c) *Hearing Officers.* A Hearing Officer Panel shall be established and shall consist of not less than six attorneys appointed by the General Counsel to serve on a rotating basis.

(d) *Precedence of statutes and Executive orders.* Where an office of the Department is required by statute or Executive order to follow debarment or suspension procedures that may differ from the requirements of this part, the statutory or Executive order procedures shall take precedence. The appropriate liaison officer shall provide the Director, Office of Investigation, with such statutes or Executive orders and all implementing materials.

§ 24.11 Suspension.

Suspension is a drastic action taken when there is suspicion of fraud or other criminal conduct in Government business or contractual dealings and, as such, shall not be based upon an unsupported accusation. A contractor or grantee is suspended pending investigation and appropriate action by the Department of Justice. In assessing whether adequate evidence exists for invoking a suspension, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment shall include an examination of basic documents, such as contracts, inspection reports, and correspondence. A suspension may be modified whenever it is determined to be in the interest of the Government to do so.

§ 24.12 Causes and conditions under which contractors or grantees may be suspended.

(a) The Assistant Secretaries of the Department may, in the interest of the Government, suspend a contractor or grantee:

(1) Suspected, upon adequate evidence, of—

(i) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract; or

(ii) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility; or

(2) For other causes of such serious and compelling nature, affecting responsibility, as may be determined in writing by the Secretary or his designee to warrant suspension. The determination shall clearly demonstrate that the suspension is in the best interests of the Department.

(b) A suspension invoked by another agency for any of the causes set forth in paragraph (a) (1) and (2) of this section may be the basis for the imposition of a concurrent suspension by the Department.

§ 24.13 Period and scope of suspension.

(a) *Period of suspension.* All suspensions shall be for a temporary period pending the completion of an investigation and such legal proceedings as may ensue. In cases involving suspected violations of Federal law where prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General requests continuance of the suspension. If such a request is received, the suspension may be continued for an additional 6 months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12-month period. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. Whenever prosecutive action has been initiated, the suspension may continue until the legal proceedings are completed. Upon removal of a suspension, consideration may be given to debarment in accordance with § 24.10.

(b) *Scope of suspension.* (1) Suspension may include all known affiliates of a contractor or grantee.

(2) A decision to include known affiliates in a proposed suspension is an individual determination and, as such, must be made on a case-by-case basis. Among the factors to be considered in making this determination are (i) likelihood of the affiliate's knowledge of or participation in the suspected improper conduct, and (ii) the impact of its suspension on Department programs.

(3) The criminal, fraudulent, or other seriously improper conduct of an individual may be imputed to the organization with which he is connected when the impropriety involved was performed within the course of his official duty, or with knowledge or approval of the organization.

§ 24.14 Restrictions during period of suspension.

During a period of suspension of a contractor or grantee the following policies and procedures shall be applicable:

(a) Bids and proposals for financial assistance shall not be solicited from suspended contractors or grantees. If received, bids and proposals shall not be considered and awards for contracts shall not be made to suspended contractors or grantees unless it is determined by the Department to be in the best interest of the Government. A determination to consider such bids and make such awards shall include consideration of the unique value of the bidder's services and the degree to which the suspected improper conduct reflects upon the bidder's capacity to serve the Department.

(b) Suspended contractors will be subject to the provisions of § 24.8 regarding restrictions on subcontractors.

§ 24.15 Notice of suspension.

(a) The contractor or grantee concerned shall be furnished by registered or certified mail, return receipt requested, a written notice of the suspension by the appropriate Assistant Secretary within 10 days after the effective date. The notice shall state as follows:

(1) The suspension is based (i) on the information that the contractor or grantee has committed irregularities of

a serious nature in business dealings with the Government, or (ii) on irregularities which seriously reflect on the propriety of further dealings of the contractor or grantee with the Government. (The irregularities should be described in general terms without disclosing the Government's evidence.)

(2) The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue.

(3) Bids and proposals for participation in a Department program will not be solicited from the contractor or grantee and, if received, will not be considered for award unless determined by the Department to be in the best interest of the Government.

(4) The suspension is effective throughout the Department. All inquiries concerning suspended parties shall be handled in accordance with Department procedures. Where a matter has been referred to the Department of Justice, the Department shall not give further information to the contractors or grantees concerning the reasons for suspension beyond that stated in the notice of suspension set forth in this section until the Department of Justice has been advised of the inquiry and acquiesces in any such disclosure.

(5) The suspended party is entitled to request an opportunity to be heard and represented by counsel in accordance with § 24.10 of this part.

PART 40—STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF PUBLICLY OWNED RESIDENTIAL STRUCTURES

Sec.
40.1 Purpose.
40.2 Definition of "residential structure."
40.3 Applicability.
40.4 Standards.
40.5 Waiver.
40.6 Records.

AUTHORITY: The provisions of this Part 40 issued under sec. 3, 82 Stat. 719, 42 U.S.C. 4153; sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 40.1 Purpose.

This part prescribes standards for the design, construction, and alteration of publicly owned residential structures to insure that physically handicapped persons will have ready access to, and use of, such structures.

§ 40.2 Definition of "residential structure."

(a) As used in this part, the term "residential structure" means a residential structure (other than a privately owned residential structure and a residential structure on a military reservation):

(1) Constructed or altered by or on behalf of the United States;

(2) Leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or

(3) Financed in whole or in part by a grant or loan made by the United States after August 12, 1968, if such residential structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

(b) As used in this part, "residential structure" includes the following:

(1) Any residential structure which, in whole or in part, is intended for occupancy by the physically handicapped or designed for occupancy by the elderly;

(2) All elevator residential structures;

(3) Any residential structure which contains 25 or more housing units; and

(4) Nonresidential structures appurtenant to a residential structure covered under this part.

§ 40.3 Applicability.

(a) The standards prescribed in § 40.4 are applicable to residential structures designed after the effective date of this part. If the design of a structure commenced prior to that date, the standards shall be made applicable to the maximum extent practicable, as determined by the head of the department, agency, or instrumentality of the United States concerned. If no design stage is involved in the construction or alteration of a residential structure, the standards of § 40.4 shall be applicable to construction or alteration for which bids are solicited after the effective date of this part.

(b) The standards prescribed in § 40.4 are not applicable to:

(1) Any portion of a residential structure or its grounds which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing residential structure to the extent that the alteration does not involve work which is related to the standards of this part; or

(3) The alteration of an existing building, or of such portions thereof, to which application of the standards is not structurally feasible.

§ 40.4 Standards.

(a) Residential structures subject to this part shall be designed, constructed, or altered to insure that physically handicapped persons will have ready access to, and use of, such structures. This requirement shall be satisfied by using the specifications contained in the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped, Number A117.1–1961," approved by the American Standards Association, Inc. (subsequently changed to United States of America Standards Institute), herein referred to as the "American Standard Specifications." Except as otherwise provided in paragraph (b) of this section, the standards shall be applicable to the extent provided in the American Standard Specifications.

(b) Application of the American Standard Specifications is modified as follows:

(1) The specifications in section 5.6 are applicable to toilet rooms which are provided for the public. Although no specifications are prescribed in section 5.6 for bathrooms in individual housing units, consideration shall be given to the need for access by the physically handicapped in connection with the design, construction, or alteration of such bathrooms.

(2) The specifications in section 5.10, "Controls," and 5.11, "Identification," are recommended specifications but not mandatory.

§ 40.5 Waiver.

The applicability of the standards set forth in this part may be modified or waived on a case-by-case basis upon application to the Secretary of HUD or, with respect to the college housing program under title IV of the Housing Act of 1950 (12 U.S.C. 1749) and the low-rent public housing program under the United States Housing Act of 1937 (42 U.S.C. 1401), to the Assistant Secretary for Housing Production and Mortgage Credit, made by the head of the department, agency, or instrumentality of the U.S. concerned only if the Secretary or the Assistant Secretary, as appropriate, determines that such waiver or modification is clearly necessary and consistent with the purpose of Public Law 90–480 (42 U.S.C. 4153).

§ 40.6 Records.

The administering agency's file on each contract, grant, or loan involving the design, construction, or alteration of a residential structure shall include appropriate documentation indicating: (a) That the standards prescribed in § 40.4 are applicable to and have been or will be incorporated in the residential structure, or (b) that the grant or loan has been or will be made subject to the requirement that the standards are applicable and will be incorporated in the residential structure. The file should also indicate any modification or waiver of the standards which has been issued by the Secretary of HUD.

PART 41—RELOCATION PAYMENTS

Subpart A—General

Sec.
41.1 Statement of applicable law.
41.2 Definitions.
41.3 Relocation payments by the Agency.
41.4 Relocation adjustment payment; additional relocation payment; replacement housing payment.
41.5 Small business displacement payment.
41.6 Notice of intention to move.
41.7 Determining moving expenses of business concerns.
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41.10 Fixed relocation payments to individuals and families.
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Subpart B—Requirements Relating to Specific Programs

41.21 Statement of applicability.
41.22 Urban renewal and neighborhood development programs.
41.23 Code enforcement or demolition grants.
41.24 Interim assistance areas.
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41.27 Neighborhood facilities projects.
41.28 Public facility loans; grants for basic water and sewer facilities; and grants for advance acquisition of land.
41.29 Model Cities.

AUTHORITY: The provisions of this Part 41 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

CROSS REFERENCE: For the current legal status of the regulations in this Part 41, see §§ 42.5 and 42.25 of Subtitle A.

Subpart A—General

§ 41.1 Statement of applicable law.

(a) Section 305 of the Housing Act of 1956 (70 Stat. 1100, 42 U.S.C. 1456) amended title I of the Housing Act of 1949, by adding a new section 106(f), which provided that title I urban renewal projects may include the making of relocation payments subject to rules and regulations prescribed by the Housing and Home Finance Administrator. Section 106(f) was amended by section 304 of the Housing Act of 1957 (71 Stat. 300), section 409 of the Housing Act of 1959 (73 Stat. 673), and section 304 of the Housing Act of 1961 (75 Stat. 167). Section 310 of the Housing Act of 1964 amended title I by adding a new section 114 (78 Stat. 788, 42 U.S.C. 1465) and incorporated therein, with additional provisions, the former section 106(f) of title I, which was repealed (42 U.S.C. 1456(f)). Section 311(a) of the Housing and Urban Development Act of 1965 amended title I by adding a new section 117 (79 Stat. 478, 42 U.S.C. 1468), providing for grants for programs of code enforcement and providing that the provisions of section 114 shall be applicable to such programs. Section 514 of the Housing and Urban Development Act of 1968 (82 Stat. 525, 42 U.S.C. 1468a) amended title I by adding a new section 118, providing for grants for programs of interim assistance for slums and blighted areas and providing that the provisions of section 114 of title I shall be applicable to all activities assisted pursuant to section 118 to the same extent as if such activities were being carried out as part of an urban renewal project. Section 516 of the Housing and Urban Development Act of 1968 (82 Stat. 526, 42 U.S.C. 1465(c)) amended section 114(c) by expanding the relocation payments provisions applicable to the programs of the Department of Housing and Urban Development.

(b) Section 404(a) of the Housing and Urban Development Act of 1965 (79 Stat. 486, 42 U.S.C. 3074) provides that the provisions of section 114 (b), (c), and (d) of title I of the Housing Act of 1949 shall be applicable, to the extent not otherwise authorized by any other Federal law, to any federally assisted development program. Section 401 of the Housing and Urban Development Act of 1965 (79 Stat. 485, 42 U.S.C. 3071) defines development program to include any program established by or conducted under title II of the Housing Amendments of 1955 (69 Stat. 642, 42 U.S.C. 1491) (public facility loans); title VII of the Housing Act of 1961 (75 Stat. 183, 42 U.S.C. 1500) (open-space land, urban beautification, and historic preservation); and title VII of the Housing and Urban Development Act of 1965 (79 Stat. 489, 42 U.S.C. 3101) (grants for basic water and sewer facilities; grants for advance acquisition of land; and neighborhood facilities grants).

(c) Section 107 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 42 U.S.C. 3301) provides that relocation payments in the model cities program shall be made subject to the terms, conditions, and limitations of section 114 (b), (c), (d), and (e) of title I of the Housing Act of 1949.

(d) Section 15(8) of the United States Housing Act of 1937 (50 Stat. 888, 42 U.S.C. 1415(8)) provides that the terms, conditions, and limitations of section 114 (b), (c), and (d) of title I of the Housing Act of 1949 shall be applicable to relocation payments made in connection with low-rent public housing projects assisted by the Department of Housing and Urban Development.

§ 41.2 Definitions.

For the purpose of the regulations in this part, the following terms shall mean:

(a) *Actual direct loss of property.* Actual loss in the value of property (exclusive of goods or other inventory kept for sale) sustained by the site occupant by reason of the disposition or abandonment of the property resulting from the site occupant's displacement. A loss resulting from damage to the property while being moved is not included.

(b) *Agency.* (1) In an urban renewal area, the local public agency (LPA) authorized to undertake an urban renewal project being assisted under title I of the Housing Act of 1949 (42 U.S.C. 1450);

(2) In a code enforcement area or demolition grant area, the code agency;

(3) In an area receiving interim assistance, the city, other municipality, or county;

(4) In an area receiving assistance in the development, acquisition, or administration of low-rent housing or slum clearance projects by a local housing authority, the local housing authority (LHA);

(5) In an open-space area or an area receiving assistance pursuant to the historic preservation or urban beautification programs, a public body authorized to acquire real property in the locality to carry out these programs;

(6) In a neighborhood facilities grant area, a governmental entity authorized to carry out a project and to provide continuing control over the use of the project facilities;

(7) In an area receiving assistance for activities pursuant to the Public Facilities Loans Program, the Water and Sewer Facilities Grant Program, or the Advance Acquisition of Land Program, any public body or private nonprofit corporation authorized to acquire or utilize real property in the course of such programs; and

(8) In a model cities area, the municipality, county, or any local public body having general governmental powers.

(c) *Business concern.* A corporation, partnership, individual, or other private entity, including a nonprofit organization, engaged in some type of business, professional, or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession, or institution.

(d) *City.* Any municipality (or two or more municipalities acting jointly) or any county or other public body (or two or more acting jointly) having general governmental powers.

(e) *Code agency.* A city, other municipality, or county authorized to engage in code enforcement activities consisting of structural or other substantial repairs to, or alterations of, any building or other improvement on land, the demolition of any building or improvement, or a reduction in number of occupants of, or any other change in the use of, any parcel of real property, pursuant to the requirements of, or to comply with notice by a municipality of enforcement of, a zoning, building, or other municipal code or ordinance.

(f) *Family.* Two or more persons related by blood, marriage, or adoption, who are living together in a single dwelling unit.

(g) *Federal financial assistance contract.* (1) A contract for a loan, a grant, or a loan and grant, between the Federal Government and the LPA for an urban renewal project;

(2) A contract for a grant for concentrated code enforcement and public improvements between the Federal Government and a code agency;

(3) A contract for a grant for the demolition of unsafe structures between the Federal Government and the code agency;

(4) A contract for a grant for interim assistance to slums or blighted areas between the Federal Government and the city, other municipality, or county;

(5) An Annual Contributions Contract between the Federal Government and an LHA;

(6) A contract between the Federal Government and the public body authorized to acquire land for open-space use or for a historic preservation or urban beautification program under title VII of the Housing Act of 1961 (42 U.S.C. 1500);

(7) A contract between the Federal Government and a public body for a neighborhood facilities program grant under section 703 of the Housing and

Urban Development Act of 1965 (42 U.S.C. 3103);

(8) A contract between the Federal Government and the public body for a public facility loan under title II of the Housing Amendments of 1955 (42 U.S.C. 1491–1497); a water and sewer facilities grant under title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101–3108); and advance acquisition of land under title VII of the Housing and Urban Development Act of 1965 (42 U.S.C. 3101–3108);

(9) A contract between the Federal Government and the city for the purpose of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3301).

(h) *HUD.* (1) Prior to November 9, 1965, the Housing and Home Finance Administrator; or

(2) On and after November 9, 1965, the Housing and Home Finance Administrator in the Department of Housing and Urban Development pending appointment of the Secretary of Housing and Urban Development, and thereafter the Secretary of Housing and Urban Development; or

(3) An employee duly authorized to perform the functions of such administrator or secretary.

(i) *Individual.* A person who is not a member of a family. An elderly individual is an individual 62 years of age or over at the time of displacement. A handicapped individual is an individual who has a physical impairment which is expected to be of long-continued and indefinite duration and which substantially impedes his ability to live independently.

(j) *LHA.* A local housing authority authorized to undertake a low-rent housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.).

(k) *LPA.* A local public agency authorized to undertake an urban renewal project being assisted under title I of the Housing Act of 1949 (42 U.S.C. 1450 et seq.).

(l) *Moving expenses*—(1) *Individual and families.* Costs of packing, storing (for a period of 1 year or less), carting, and insuring of property and incidental costs of disconnecting and reconnecting household appliances.

(2) *Business concerns.* Costs of dismantling, crating, storing (for a period of 1 year or less), transporting, insuring, reassembling, reconnecting, and reinstalling of property (including goods or other inventory kept for sale): *Provided,* That the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting such reassembly, reconnection, or reinstallation shall not be included unless the agency determines, with HUD concurrence, that such additions, improvements, alterations, or other physical changes are required by law or are otherwise necessary to the continued operation of the business.

(m) *Plan.* A duly approved plan, as it exists from time to time, for any program or project as defined in this part.

(n) *Project area.* An area which HUD has approved for a project or program in connection with (1) urban renewal; (2) concentrated code enforcement; (3) demolition; (4) interim assistance; (5) low-rent public housing or slum clearance; (6) open-space land; (7) historic preservation; (8) urban beautification; (9) neighborhood facilities development; (10) public facilities loans; (11) water and sewer facilities grants; (12) advance acquisition of land; (13) the area in which model cities activities are carried out; whichever is pertinent in the context.

(o) *Property.* Tangible personal property, excluding fixtures, equipment, and other property which under State or local law are considered real property, but including such items of real property as the site occupant may lawfully remove.

(p) *Public body.* A State, county, municipality, or other political subdivision, or an authority or agency which is a public legal entity.

(q) *Relocation payment.* A payment by an agency:

(1) To an individual or family, for reasonable and necessary moving expenses and any actual direct loss of property (for which reimbursement or compensation is not otherwise made);

(2) To a business concern, for its reasonable and necessary moving expenses except goodwill or profit and any actual direct loss of property (for which reimbursement or compensation is not otherwise made);

(3) To a small business concern, for its displacement (small business displacement payment);

(4) To or on behalf of a family or elderly individual for relocation adjustment prior to August 1, 1968 (relocation adjustment payment); or to or on behalf of a family or elderly or handicapped individual on or after August 1, 1968 (additional relocation payment),

(5) To an individual, family, or business concern for settlement costs (for which reimbursement or compensation is not otherwise made);

(6) To a family or individual to assist an owner-occupant of a one- or two-family dwelling to purchase and occupy a replacement dwelling (replacement housing payment).

(r) *Settlement costs.* (1) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the agency;

(2) Penalty costs for prepayment of any mortgage encumbering such real property; and

(3) The pro rata portion of real property taxes allocable to a period subsequent to the date of vesting of title, or the effective date of the acquisition of such real property by the agency, whichever is earlier.

(s) *Site occupant.* A family, individual, or business concern, as defined above.

(t) *Small business concern.* A business concern (other than a nonprofit organization) which during the base period had:

(1) Average annual net earnings before income taxes of less than $10,000; and

(2) In the case of displacements prior to June 15, 1965, average annual gross receipts or sales in excess of $1,500; or in the case of displacements on and after June 15, 1966, average annual gross receipts or sales in excess of $1,500 together with average annual net earnings before income taxes in excess of $500, or average annual gross receipts or sales in excess of $2,500.

Earnings for the purpose of this paragraph(s) include salaries, wages, or other compensation received by an owner of the concern or any member of his household related to him. The term "owner" as used in the previous sentence includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by HUD. For purposes of this paragraph(s), the base period shall be the 2 tax years immediately preceding displacement (or, if the business concern is not in business that long, such other period as may be approved by HUD): *Provided,* That, if a business concern does not qualify as a small business concern under this paragraph based upon the 2 tax years immediately preceding displacement and the agency finds that its business activity during such period was not representative, the base period shall be the 4 tax years immediately preceding displacement.

(u) *Voluntary rehabilitation.* Structural or other substantial repairs to, or alterations to, or demolition of, any building or other improvement on land within a project area, undertaken by an owner in order to conform to the property rehabilitation standards set forth in the applicable plan.

§ 41.3 Relocation payments by the Agency.

(a) The Agency shall make relocation payments to or on behalf of eligible site occupants in accordance with and to the full extent permitted by the regulations in this part: *Provided,* That for each Federal financial assistance contract the agency may elect whether to make payments for moving expenses in excess of $25,000 in accordance with § 41.13(a)(2).

§ 41.4 Relocation adjustment payment; additional relocation payment; replacement housing payment.

(a) *Relocation adjustment payment.* A family or elderly individual who satisfies the pertinent eligibility conditions set forth in §§ 41.22, 41.23, 41.24, 41.25, 41.26, 41.27, 41.28, or 41.29 prior to August 1, 1968, is eligible for a relocation adjustment payment if the site occupant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.) or a State or local program found by HUD to

have the same general purposes or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(a)); and

(2) Has moved to a decent, safe, and sanitary dwelling.

(b) *Additional relocation payment.* A family or elderly or handicapped individual who satisfies the pertinent eligibility conditions of §§ 41.22, 41.23, 41.24, 41.25, 41.26, 41.27, 41.28, or 41.29, on or after August 1, 1968, is eligible for an additional relocation payment if the site occupant:

(1) Is unable to secure a suitable dwelling in (i) a low-rent housing project assisted under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.) or a State or local program found by HUD to have the same general purposes or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(a)); and

(2) Has moved to a decent, safe, and sanitary dwelling.

An additional relocation payment not to exceed $500 in the first 12 months and $500 in the second 12 months may be made on a monthly basis, or on a lump-sum basis, or otherwise on other than a monthly basis in cases in which other than monthly payments are determined warranted by HUD.

(c) *Replacement housing payment.* A family or individual who satisfies the pertinent eligibility conditions of §§ 41.22, 41.23, 41.24, 41.25, 41.26, 41.27, 41.28, or 41.29, on or after August 1, 1968, is eligible for a replacement housing payment if the site occupant:

(1) Is the owner of real property acquired for a project and is displaced from such property;

(2) Has occupied a single- or two-family dwelling located on the real property for a period of not less than 1 year, prior to the initiation of negotiations for the acquisition of the real property;

(3) Does not receive the additional relocation payment provided for by § 41.4(b);

(4) Purchases and occupies a replacement dwelling within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project; and

(5) Does not receive a payment pursuant to the State law of eminent domain determined by HUD to have substantially the same purpose and effect as would a replacement housing payment, and to be a part of the cost of the project for which Federal financial assistance is available.

§ 41.5 Small business displacement payment.

A small business concern which satisfies the pertinent eligibility conditions of §§ 41.22, 41.23, 41.24, 41.25, 41.26, 41.27, 41.28, or 41.29 is eligible for a small business displacement payment if the concern:

(a) Is not part of an enterprise having two or more establishments outside the project area;

(b) Has filed with the Internal Revenue Service income tax returns for the base period, or has furnished such other evidence of earnings as may be approved by HUD; and

(c) Was doing business in the project area on the date of approval by the local governing body of the plan for the project area in which the small business concern is located, or on the date of the approval by the agency of an application for a Federal financial assistance contract for the project area, whichever is pertinent in the context.

§ 41.6 Notice of intention to move.

Except as provided in this § 41.6, no relocation payment for moving expenses or actual direct loss of property and no small business displacement payment shall be made to a business concern unless:

(a) The agency has received, at least 30 days but not earlier than 90 days prior to the moving date, written notice from the business concern of its intention to move or dispose of the property, which shall be described generally in the notice, and the date of such intended move or disposition; and

(b) The business concern has permitted, at all reasonable times, the inspection by or on behalf of the agency of such property at the site from which the business concern is displaced. For the purpose of this § 41.6, "moving date" shall mean the date on which the first item of such property is intended to be moved or disposed of. The agency may make a relocation payment notwithstanding nonreceipt of such timely notice only if the agency has determined that there was reasonable cause for the failure of the business concern to give such notice, and the agency has adequately verified the facts pertaining to the move or disposition and the requested relocation payment.

§ 41.7 Determining moving expenses of business concerns.

(a) *Submission of bids prior to moving date.* No claim for a relocation payment for moving expenses in excess of $500 shall be allowed for the costs incurred by a business concern unless the concern has submitted to the agency, at least 15 days prior to the commencement of the move, a bid from three reputable firms covering the moving costs involved. Whenever it is not feasible to obtain three bids for any category of work, a lesser number of bids shall be submitted, together with a written justification by the concern; and no relocation payment shall be allowed in such cases unless the agency has approved the justification. The agency, with HUD concurrence, may waive any requirement of this paragraph (a) for good cause.

(b) *Payment not to exceed low bid.* Payment to a business concern for moving expenses shall not exceed the amount of the low bid submitted in accordance with paragraph (a) of this section unless the bid requirement has been waived in accordance with paragraph (a) of this section.

§ 41.8 Determining actual direct loss of property.

(a) The amount of actual direct loss of any item of property claimed shall be determined as follows:

(1) The fair market value of the property for continued use at its location prior to the displacement shall be ascertained by an appraisal satisfactory to the agency, except as provided in subparagraph (2) of this paragraph.

(2) If the value of the property for which actual direct loss is claimed does not warrant the expenses of an appraisal, then its fair market value for such continued use shall be computed as follows: The original cost of the item to the claimant (exclusive of installation) multiplied by the figure obtained by dividing the period of the remaining useful life of the property at the date of removal by the period of the normal useful life of the property at the date of its acquisition by the claimant.

(3) The property shall be disposed of by a bona fide sale (as determined by the agency) at the highest price offered after reasonable efforts have been made over a reasonable period of time to interest prospective purchasers. A trade-in of the property may be considered a bona fide sale, and the trade-in allowance, exclusive of any amount of discount that would be allowed on the price of the property being acquired in the absence of the trade-in, shall be the amount realized upon the sale of the property.

(4) If the amount realized from the sale, after deducting ordinary and reasonable expenses of the sale, is less than the fair market value for such continued use, the difference between the net amount realized and the fair market value is the amount of actual direct loss of the property.

(b) If a bona fide sale is not effected because no offer is received for the property, after reasonable efforts have been made over a reasonable period of time to sell it, then its fair market value for continued use, ascertained as provided in this section, is the amount of actual direct loss of the property.

(c) No relocation payment shall be made for the cost of an appraisal secured by the agency to determine the amount of any actual direct loss of property, which cost shall be borne by the agency.

(d) No relocation payment shall be made for the cost of any appraisal made by or on behalf of a claimant subsequent to the appraisal required by § 41.8(c).

§ 41.9 Outdoor advertising display.

A business concern which is not displaced from a project area shall be eligible for a relocation payment for moving expenses with respect to its outdoor advertising displays required, in the determination of the agency, to be removed from the project area.

§ 41.10 Fixed relocation payments to individuals and families.

(a) *Schedule of fixed payments.* An agency may pay, to eligible individuals and families who elect to receive them,

fixed amounts in lieu of payments for reasonable and necessary moving expenses and actual direct losses of property. Each agency intending to make fixed payments for moving expenses shall prepare a schedule (Form HUD-6142) of the fixed amounts which it proposes to pay. The schedule shall contain a statement indicating that the agency will permit eligible individuals and families so choosing to claim reimbursement for their actual moving expenses and actual direct loss of property.

(b) *Schedule provision.* (1) A proposed schedule of fixed payments to eligible individuals and families owning furniture shall provide for a graduated scale of payments related to the number of all rooms occupied or utilized by the claimant, except bathrooms, hallways, and closets, which payments shall not exceed the result obtained by multiplying a reasonable local average hourly moving rate (as determined by the agency, with HUD concurrence) by the number of hours allotted to moving personal effects.

(2) Fixed payments to eligible individuals and families not owning furniture, but owning furnishings, shall be the average hourly rate or $25, whichever is the lesser, calculated in accordance with the method prescribed in § 41.10 (b) (1): *Provided,* That fixed payments to eligible individuals or families not owning furniture or furnishings shall not exceed: (i) $10 for an individual, (ii) $15 for any family.

(c) *Administration of fixed payments.* Eligible individuals or families may be paid the amount provided in the schedule of fixed payments approved by HUD upon receipt of a properly completed claim. A fixed payment shall be in full settlement for the claimant's moving expense and any actual direct loss of property. If the joint occupants of a single dwelling unit in the project area move to two or more locations and consequently submit more than one claim, an eligible claimant for a fixed payment may be paid only his reasonable prorated share (as determined by the agency) of the total fixed payment applicable to such dwelling unit, and the total of fixed payments made to all such claimants moving from such dwelling unit shall not exceed the total fixed payment applicable to such dwelling unit.

§ 41.11 Administration of relocation payments.

(a) *Conditions for relocation payment.* The agency (or, if the agency is the municipality, the board or commission responsible for carrying out the federally assisted activities or, if there is no such board or commission, the principal executive officer of the municipality) shall approve a schedule (Form HUD-6143) of average annual gross rentals for standard housing in the locality for determining the amount of relocation adjustment payments and additional relocation payments in accordance with § 41.4 (a) and (b), and a separate schedule (Form HUD-6155) for determining the average price of standard sales housing in a locality, and any other conditions under which the agency will make relocation payments. The schedules and conditions shall be consistent with the regulations in this part and shall be available in written form to site occupants in the office of the agency.

(b) *Notice to site occupants.* The agency shall furnish, to all site occupants who occupy property within a project area (or the area of the federally assisted activities) and who are anticipated to be displaced, a notice or information statement advising the site occupant of (1) the availability of relocation payments to eligible site occupants, and (2) the office where the conditions under which relocation payments will be made are available for inspection.

(c) *Action on claim—finality.* The agency is initially responsible for determining the eligibility of a claim for, and the amount of, a relocation payment and shall maintain in its files complete and proper documentation supporting the determination. The determination on each claim shall be made or approved either by the governing body of the agency or by the principal executive officer of the agency or his duly authorized designee. The determination by the agency or any redetermination by HUD shall be final and conclusive with respect to the rights of any site occupant, and not subject to redetermination by any court or any other officer. Subject to the requirements of this paragraph (c), the agency may permit a third-party contractor responsible for relocation activities to examine and recommend action on a claim and to disburse funds in payment of a claim which has been approved by the agency.

(d) *Prompt payment.* A relocation payment shall be made by the agency as promptly as possible after a site occupant's eligibility has been determined in accordance with the regulations in this part.

(e) *Agency setoff against claim.* The agency may set off against the claim of an otherwise eligible site occupant any financial claim the agency may have against the site occupant arising out of the use of the real property.

(f) *Approval by HUD—business concerns.* No claim for a relocation payment for moving expenses or settlement costs, or both, shall be paid without the concurrence of HUD if the claim exceeds $10,000. No claim for a relocation payment for moving expenses which involves additions, improvements, alterations, or other physical changes, described in § 41.2(l) (2), shall be paid without the concurrence of HUD.

(g) *Temporary moves.* No relocation payment shall be made to a site occupant for a temporary move.

(h) *Reimbursement of relocation payments.* Relocation payments made in accordance with the regulations in this part and pursuant to a Federal financial assistance contract are reimbursable in full to the agency as a Federal grant.

(i) *Accounts and records.* Accounts and records shall be subject to inspection or audit at all reasonable times by HUD. Records pertaining to eligibility for relocation payments, including all claims, receipted bills, or other documentation in support of a claim, and records pertaining to action on a claim, shall be retained by the agency for not less than 3 years after the completion of the federally assisted activities.

§ 41.12 Filing of claims.

(a) *Form of claim.* To obtain a relocation payment, site occupants shall file written claims with the agency on the appropriate HUD forms.

(b) *Documentation in support of a claim.* A claim shall be supported by the following:

(1) If for moving expenses, except in the case of a fixed payment, a receipted bill or other evidence of such expenses. By prearrangement between the agency, the site occupant, and the mover, evidenced in writing, the claimant or the mover may present an unpaid moving bill to the agency, and the agency may pay the mover directly.

(2) If for actual direct loss of property, written evidence thereof, which may include appraisals, certified prices, copies of bills of sale, receipts, canceled checks, copies of advertisements, offers to sell, auction records, and such other records as may be appropriate to support the claim.

(3) In any other case, such documentation as may be required by the agency, which may include income tax returns, withholding or information statements, and proof of age.

(c) *Time for filing claims.* A claim for moving expenses, actual direct loss of property settlement costs, or a small business displacement payment shall be submitted to the agency within a period of 6 months after the displacement of the site occupant. A claim for a relocation adjustment payment or for an additional relocation payment shall be submitted within a period of 6 months after the displacement of the site occupant. A claim for a replacement housing payment shall be submitted within 18 months after the displacement of the claimant. The time limitations in this paragraph (c) may be waived by the agency for good cause with HUD concurrence.

§ 41.13 Limitations on amount of relocation payments.

(a) *Moving expenses and loss of property—(1) Maximum amount—individuals and families.* The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, shall not exceed $200 in the case of individuals, families, or two or more unrelated individuals occupying the same dwelling unit.

(2) *Maximum amount—business concerns.* The maximum relocation payment that may be made or recognized in the case of a business concern for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, shall not exceed $3,000. If the total of the actual certified moving expenses incurred

committees of the House and Senate having legislative jurisdiction over the program or activity involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the applicant or recipient has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least ten days from the mailing of such notice to the applicant or recipient. During this period of at least ten days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(c) of this Part 1 and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with sections 3105 and 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with the practice and procedure for hearings issued by the Department and published in Part 2 of this subtitle relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part 1, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Agency and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts with respect to two or more programs or activities to which this Part 1 applies are asserted to constitute noncompliance with this Part 1 or noncompliance with this Part 1 and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part 1. Final decisions in such cases, insofar as this Part 1 is concerned, shall be made in accordance with § 1.10.

§ 1.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in the rules of procedure issued by the Department (Part 2 of this subtitle), file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

(b) *Decisions on record or review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1.9(a) a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part 1 with which it is found that the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program or activity involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Part 1, including provisions designed to assure that no Federal financial assistance will

by the LPA) for the site occupant to vacate the real property.

(2) In the case of voluntary rehabilitation, the commencement of, or notice by the owner of the real property of the commencement of, voluntary rehabilitation of the building or other improvement, or the part thereof occupied by the site occupant which makes it necessary (as determined by the LPA) for the site occupant to vacate the real property.

(3) In the case of either code enforcement or voluntary rehabilitation, an increase or a notice of increase in rent for the rent period involved amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the LPA for the displacees' ability to pay.

§ 41.23 Code enforcement or demolition grants.

(a) *General.* A site occupant is eligible for a relocation payment if the displacement is:

(1) From real property within the code enforcement or demolition grant project area on or after (i) the date of execution of a Federal financial assistance contract, or (ii) the date of HUD approval of a budget for a program of concentrated code enforcement, or (iii) the date of HUD approval of an application for a demolition grant: *Provided,* That in the case of approval of such budget or application a Federal financial assistance contract is thereafter executed for the area; and

(2) Made necessary by (i) code enforcement activities as further defined in paragraph (b) of this section, (ii) a program of voluntary rehabilitation of buildings or other improvements in accordance with the program of concentrated code enforcement and public improvement, as further defined in paragraph (c) of this section, (iii) acquisition of real property by the code agency or any other public body in connection with a federally assisted program of concentrated code enforcement and public improvement as further defined in paragraph (d) of this section, or (iv) demolition activities as further defined in paragraph (e) of this section.

(b) *Displacement made necessary by code enforcement.* The displacement of a site occupant from a code enforcement area is deemed made necessary by code enforcement if the vacation of the real property occurs on or after the commencement of code enforcement, or the receipt of notice by the site occupant that code enforcement will be required, with respect to the real property occupied by the site occupant under either of the following circumstances:

(1) The code enforcement cannot reasonably be undertaken without the vacation of the real property by the site occupant and the code agency so determines; or

(2) In the case of a tenant, the owner has increased the rent or has notified the tenant of an increase in rent amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the code agency for displacees' ability to pay.

No claim based upon code enforcement shall be approved unless the code agency shall have determined that the site occupant was displaced by such activities.

(c) *Displacement made necessary by voluntary rehabilitation.* The displacement of a site occupant from a code enforcement area is deemed made necessary by voluntary rehabilitation:

(1) Upon the commencement of such rehabilitation of the building or other improvement, or the part thereof occupied by the site occupant which makes it necessary (as determined by the code agency) for the site occupant to vacate the real property; or

(2) In the case of a tenant, an increase or a notification of an increase in rent amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also exceed the standards established by the code agency for displacees' ability to pay.

(d) *Displacement made necessary by acquisition.* The displacement of a site occupant from a code enforcement project area is deemed made necessary by acquisition if the vacation of the real property occurs after the code agency or other public body acquiring the legal or equitable title or the right to possession has ordered the site occupant to vacate the real property. No claim based upon acquisition of real property by a public body other than the code agency shall be approved unless the code agency has determined that the site occupant was displaced by the acquisition or in contemplation thereof. The determination shall be supported by a signed statement from the public body indicating (1) when it acquired or proposes to acquire the property occupied by the site occupant, and (2) whether it compensated or has agreed to compensate the site occupant for moving expenses, actual direct loss of property, or settlement costs resulting from the displacement.

(e) *Displacement made necessary by demolition.* The displacement of a site occupant from a demolition grant project area is deemed made necessary by demolition if the vacation of the real property occurs after the code agency has ordered the real property to be vacated and demolished.

§ 41.24 Interim assistance areas.

(a) *Displacement.* A site occupant is eligible for a relocation payment if the displacement is:

(1) From private real property within the interim assistance project area on or after the date of execution of a Federal financial assistance contract or the date of HUD approval of a budget for a program of interim assistance: *Provided,* That in the latter case a Federal financial assistance contract is thereafter executed for the area; and

(2) Made necessary by (i) activities designed to improve private properties to the extent needed to eliminate the most immediate dangers to the public health and safety, as further defined in paragraph (b) of this section, (ii) acquisition of real property by the agency in connection with a federally assisted program of improvement of private properties, as further defined in paragraph (c) of this section, or (iii) demolition of structures determined to be structurally unsound or unfit for human habitation, and which constitute a public nuisance and serious hazard to the public health and safety, as further defined in paragraph (d) of this section.

(b) *Displacement made necessary by improvement of private properties.* The displacement of a site occupant from an interim assistance project area is deemed made necessary by improvement of private properties if the vacation of the private real property occurs on or after the commencement of improvement activities, or the receipt of notice by the site occupant that improvements will be required with respect to private real property occupied by the site occupant, and if:

(1) The improvement is necessary to eliminate the most immediate dangers to public health and safety, and the agency so determines, and the improvement cannot reasonably by undertaken without the vacation of the real property by the site occupant and the agency so determines. No claim based upon interim assistance involving improvement of private properties shall be approved unless the agency shall have determined that the claimant was displaced by such activities. The determination shall be supported by a statement by the agency giving the factual basis on which the determination was made; or

(2) In the case of a tenant, the owner has increased the rent, or has notified the tenant of an increase in rent, amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the agency for displacees' ability to pay.

(c) *Displacement made necessary by acquisition.* The displacement of a site occupant from an interim assistance project area is deemed made necessary by acquisition if the vacation of the real property occurs after the agency has acquired legal or equitable title or the right to possession and has ordered the site occupant to vacate the real property.

(d) *Displacement made necessary by demolition of unfit structures.* The displacement of a site occupant from an interim assistance project area is deemed made necessary by demolition of unfit structures if the vacation of the real

property occurs under the following circumstances:

(1) The structures occupying the real property are structually unsound or unfit for human habitation and constitute a public nuisance and serious hazard to the public health and safety, and the agency has so determined; and

(2) The vacation of the real property occurs after the agency has ordered the real property to be vacated and demolished.

§ 41.25 Low-rent public housing.

(a) *Displacement.* A site occupant is eligible for a relocation payment if the displacement of the site occupant is:

(1) From real property within the low-rent public housing project area on or after the date of execution of the pertinent annual contributions contract (or the date of tentative site approval by HUD, whichever date is later); and

(2) Made necessary by the acquisition of the real property by the LHA.

(b) *Displacement made necessary by acquisition.* A site occupant of real property within the low-rent public housing area on the date of execution of the applicable annual contributions contract (or the date of tentative site approval by HUD, whichever date is later), which contemplates acquisition of the property, regardless of when or if such acquisition takes place, and a site occupant of the property at the time of its acquisition may be deemed displaced by the acquisition upon vacating the property. For this purpose, acquisition means the obtaining by the LHA of title to, or the right to possession of, the real property.

§ 41.26 Open-space land, urban beautification, and historic preservation.

(a) *Moving expenses and actual direct loss of property.* A site occupant is deemed displaced by the acquisition of real property for open-space use, urban beautification, or historic preservation and is eligible for a relocation payment for moving expenses and actual direct loss of property if:

(1) The acquisition of real property necessitates its vacation; and

(2) The site occupant is (i) an occupant of the real property on the date of execution of a Federal grant contract authorizing the acquisition of the real property (or, if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal grant contract, the date of such HUD concurrence, provided that in the latter case a Federal grant contract for the project is thereafter executed) regardless of when or if such acquisition takes place, or (ii) the site occupant is an occupant of the real property at the time of its acquisition.

(b) *Settlement costs.* A site occupant is deemed eligible for a relocation payment for settlement costs if:

(1) He is the owner of the real property at the time of transfer of title to the agency; and

(2) If the transfer of title to the real property occurs on or after the date of execution of a Federal grant contract authorizing the acquisition of the real property (or, if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal grant contract, on or after the date of such HUD concurrence, provided that a Federal grant contract for the project is thereafter executed).

§ 41.27 Neighborhood facilities projects.

(a) *Moving expenses and actual direct loss of property.* A site occupant is deemed displaced by the project and is eligible for a relocation payment for moving expenses and actual direct loss of property if:

(1) The project necessitates vacation of real property by the claimant; and

(2) The site occupant is (i) an occupant of the real property on the date of execution of a Federal grant contract authorizing the project (or, if HUD concurrence is given for the commencement of project activities causing the displacement prior to HUD approval of a Federal grant contract, the date of such concurrence, provided that in the latter case a Federal grant contract for the project is thereafter executed), or (ii) the site occupant is the occupant of the real property on the date of its acquisition.

(b) *Settlement costs.* A claimant for settlement costs is eligible for a relocation payment if:

(1) He is the owner of the real property at the time of transfer to the agency or to a nonprofit agency under its control which is engaged in the carrying out of the project; and

(2) The transfer of title to the real property occurs on or after the date of execution of a Federal grant contract authorizing the acquisition of the real property (or, if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal grant contract, on or after the date of such HUD concurrence, provided that a Federal grant contract for the project is thereafter executed).

§ 41.28 Public facility loans; grants for basic water and sewer facilities; and grants for advance acquisition of land.

(a) *Displacement.* A site occupant is eligible for a relocation payment if:

(1) The site occupant is displaced from the real property within the project area on or after the date of the filing of an application for Federal financial assistance; and

(2) A Federal financial assistance contract is executed under title II of the Housing Amendments of 1955 (42 U.S.C. 1491–1497) or section 702 or 704 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3102 or 3104); and

(3) The acquisition or use of such real property is determined by HUD to be necessary in connection with a project under the program; and

(4) The site occupant vacates after (i) the Agency acquires title to or use of the property in connection with the program; or (ii) the agency becomes entitled to possession of the real property pursuant to a proceeding in condemnation; or (iii) a binding contract for the purchase of the real property is entered into by the Agency and the owner of such real property if, in fact, the real property is not occupied by another occupant prior to acquisition of title to, or the right of possession of, the real property by the agency.

(b) *Settlement costs.* A claimant is eligible for a relocation payment for settlement costs if he is the owner of the real property at the time of the transfer of such real property to the agency.

§ 41.29 Model Cities.

A site occupant is eligible for relocation payment if the displacement of the site occupant is:

(a) From real property, on or after (1) the date of HUD approval of a comprehensive city demonstration program (or an amendment thereof) that identifies the undertaking resulting in the displacement as being carried out in connection with the program, or (2) such earlier date as may be approved by HUD for a specific undertaking upon the request of a city (provided that in both cases a Federal financial assistance contract is thereafter, or has been, executed and that in the latter case HUD subsequently approves a comprehensive city demonstration program, or an amendment thereof, that identifies the undertaking as one being carried out in connection with the program); and

(b) On or after (1) receipt of a notice to vacate from the owner of the property (or of a notice of increase in rent for the rent period involved amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family if in the latter case the increase results in a rent exceeding the standards established by the city for the displacees' ability to pay) or, in the case of an owner-occupant, the commencement of activities which make it necessary (as determined by the city) to vacate the property; or (2) such earlier date fixed by HUD on the basis of a determination that the move was reasonably in contemplation of a notice to vacate or an increase in rent as defined herein.

PART 42—RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

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Appendix A.

AUTHORITY: The provisions of this Part 42 issued under sec. 213, 84 Stat. 1901; 42 U.S.C. 4633, and sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

Subpart A—General

§ 42.1 Purpose.

The purpose of this subpart is to set forth provisions of general applicability with respect to the regulations in this part. Such provisions relate to (a) the effect of the regulations in this part on previously issued regulations pertaining to relocation payments, (b) statements of applicable policy and law, (c) definitions of pertinent terms, (d) a description of the dates, and the entities or persons, on or to which the regulations in this part are applicable, and the assurances required in connection with such applicability, (e) the extent of Federal participation in the costs of relocation payments and assistance, and (f) the effect on payments provided under the regulations in this part of duplicate payments made in condemnation proceedings and negotiated purchases.

§ 42.5 Supersedure.

The regulations in this part supersede those currently appearing at Part 41 of this subtitle to the extent that the regulations issued hereunder are, under § 42.25, applicable.

§ 42.10 Statement of policy.

The purpose of the regulations in this part is to carry out the following policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894; 42 U.S.C. 4601), hereinafter referred to as the "Act":

(a) To insure that uniform, fair, and equitable treatment be afforded persons displaced as a result of federally assisted projects in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole, and

(b) In the acquisition of real property for a federally assisted project, to encourage and expedite acquisition by agreements with owners of such property, to avoid litigation and relieve congestion in courts, to assure consistent treatment for owners of real property to be so acquired, and to promote public confidence in Federal land acquisition.

§ 42.15 Statement of applicable law.

(a) Section 210 of the Act requires satisfactory assurance from a State agency that specified relocation payments and relocation assistance will be provided, and replacement dwellings will be available, to displaced persons as a condition to Federal approval of any grant or loan to, or contract or agreement with, such State agency under which Federal financial assistance will be made available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of the Act.

(b) Section 305 of the Act requires satisfactory assurances from a State agency that in acquiring real property it will be guided, to the greatest extent practicable under State law, by specified land acquisition policies, and that specified payments will be made to property owners, as a condition to Federal approval of any grant or loan to, or contract or agreement with, any State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of the Act.

(c) Section 211(c) of the Act provides that any grant to, or contract or agreement with, a State agency executed before the effective date of the Act under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after such date, shall be amended to include the cost of providing payments and services under the Act.

(d) Section 211(a) of the Act provides that the cost to a State agency of providing such payments and assistance shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency. Section 211(a) also provides that where the Federal financial assistance is by grant or contribution, the Federal Government shall pay the full amount of the first $25,000 of the cost of such payments and assistance so provided by the State agency to a displaced person on account of any acquisition or displacement occurring prior to July 1, 1972, and where such Federal financial assistance is by loan, the Federal agency shall loan the State agency the first $25,000 of such costs.

(e) Subject to section 221(c) of the Act, section 220(a) repealed the following provisions of law: Section 114 of the Housing Act of 1949 (42 U.S.C. 1465); paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8); section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074); section 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307). Subject to section 221(c) of the Act, section 306 repealed sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071–3073). Sections 220(b) and 306 of the Act provide that any rights or liabilities existing under prior Acts shall not be affected by such repeals.

(f) Section 221 of the Act provides that the Act shall take effect on the date of its enactment (January 2, 1971) except that until July 1, 1972, sections 210 and 305 of said Act with respect to assurances required of State agencies shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections, and that certain repeals (specified in paragraph (e) of this section) made by sections 220(a) and 306 of the Act shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

§ 42.20 Definitions.

For the purpose of the regulations in this part, the following terms shall mean:

(a) *Business.* Any lawful activity, excepting a farm operation, conducted primarily: (1) For the purchase, sale, lease, and rental of personal and real property, and the manufacture, processing, or marketing of products, commodities, or any other personal property; (2) for the sale of services to the public; (3) by a nonprofit organization; or (4) solely for the purposes of payments under §§ 42.65, 42.70, and 42.75, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising

display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(b) *Comparable replacement dwelling.* For the purpose of computing the amount of a replacement housing payment under §§ 42.90 and 42.95, a dwelling which is (1) decent, safe and sanitary, and comparable to the acquired dwelling with respect to number of rooms, but in any event adequate to accommodate the displaced person; (2) in an area not subjected to unreasonable adverse environmental conditions from either natural or manmade sources, and not generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities and reasonably accessible to the displaced person's present or potential place of employment; (3) available on the private market to the displaced person and available to all persons regardless of race, color, religion, sex, or national origin in a manner consistent with title VIII of the Civil Rights Act of 1968; (4) to the extent practicable, and where consistent with subparagraph (1) of this paragraph, functionally equivalent and substantially the same as the acquired dwelling with respect to area of living space, age, and state of repair; and (5) within the financial means of the displaced person, provided that this subparagraph (5) shall be construed only in accordance with the intent to put such person in an equal or better position.

(c) *Decent, safe and sanitary housing.* Housing in sound, clean and weathertight condition, in conformance with local housing codes (or in the absence of local housing codes, or where the standards contained in any such code are determined by HUD to be inadequate, in conformance with standards established by HUD) and which meets the following minimum standards:

(1) Each housekeeping unit shall include a kitchen with a fully usable sink, a stove or connection for a stove, a separate and complete bathroom, hot and cold running water in both bathroom and kitchen, an adequate and safe wiring system for lighting and other electrical services, and heating as required by climatic conditions and local codes.

(2) Each nonhousekeeping unit shall be in conformance with local code standards for boarding houses, hotels and other dwellings for congregate living. If such local codes do not include requirements relating to space and sanitary facilities in this connection, standards shall be subject to the approval of HUD.

(3) Occupancy standards shall be in conformance with local codes or HUD-approved requirements, whichever is higher.

(d) *Displaced person.* (1) An individual, family, partnership, corporation or association (herein referred to as a "person") who meets the basic eligibility requirements specified in § 42.55 and as set out in general terms below:

(i) Such person moves from real property within the project area or moves his personal property from such real property on or after the applicable date specified in paragraph (a) (1) of § 42.55, and either

(ii) Such person is displaced as a result of (*a*) acquisition of such real property in whole or in part for a project, (*b*) the receipt of a written order from the acquiring agency to vacate such property for a project or (*c*) the receipt of a written notice from the acquiring agency of its intent to acquire such property for a project, or

(iii) Such person is displaced as a result of code enforcement, voluntary rehabilitation, improvement of private property, or demolition, as provided in paragraphs (c), (d), and (e) of § 42.55, or

(2) Solely for the purpose of qualifying for the payments specified in paragraph (a) (3) of § 42.55, a person who moves from real property, or moves his personal property from real property on or after the applicable date specified in paragraph (a) (1) of § 42.55 as a result of such acquisition of or displacement from other real property on which such person conducts a business or farm operation.

(e) *Dwelling.* Any single family building, one family unit (including a nonhousekeeping unit) in a two-family or multifamily building, a unit of a condominium or cooperative housing project, a mobile home or other residential unit.

(f) *Farm operation.* Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(g) *Federal financial assistance.* A grant, loan, or contribution (except any Federal guarantee or insurance) made by HUD, including a grant, loan or contribution specified below:

(1) A loan, a grant, or a loan and grant, for an urban renewal project under title I of the Housing Act of 1949 (63 Stat. 413, 414, 42 U.S.C. 1450);

(2) A grant for concentrated code enforcement and public improvements under section 117 of the Housing Act of 1949 (79 Stat. 478, 42 U.S.C. 1468);

(3) A grant for the demolition of unsafe structures under section 116 of the Housing Act of 1949 (79 Stat. 477, 42 U.S.C. 1467);

(4) A grant for interim assistance to slums or blighted areas under section 118 of the Housing and Urban Development Act of 1949 (82 Stat. 525, 42 U.S.C. 1468a);

(5) A loan, annual contribution, or capital grant made in connection with low-rent public housing projects under the U.S. Housing Act of 1937 (50 Stat. 888, 42 U.S.C. 1401 et seq.);

(6) A grant to acquire land for open-space use or for a historic preservation or urban beautification project under title VII of the Housing Act of 1961 (75 Stat. 183, 42 U.S.C. 1500);

(7) A grant for a neighborhood facilities program under title VII of the Housing and Urban Development Act of 1965 (79 Stat. 489, 42 U.S.C. 3101);

(8) A public facility loan under title II of the Housing Amendments of 1955 (69 Stat. 642, 42 U.S.C. 1491);

(9) A water and sewer facilities grant under title VII of the Housing and Urban Development Act of 1965 (79 Stat. 489, 42 U.S.C. 3101);

(10) A grant for advance acquisition of land under title VII of the Housing and Urban Development Act of 1965 (79 Stat. 489, 42 U.S.C. 3101);

(11) A grant for the purpose of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 42 U.S.C. 3301);

(12) Loans or grants to assist educational institutions in construction of housing and other educational facilities under title I of the Housing Act of 1950 (64 Stat. 48, 77; 12 U.S.C. 1749) where such payments are made to a State agency;

(13) Loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (73 Stat. 654, 667, 12 U.S.C. 1701q) where such loans are made to a State agency;

(14) Where contributions are made to a State agency and the performance by such State agency, or by a private body acting on behalf of such State agency, of the undertakings necessary to enable it to receive such contributions will be the direct cause of displacement, the payments or contributions specified below:

(i) Assistance payments under section 235 and interest reduction payments under section 236 of the National Housing Act (48 Stat. 1246, 12 U.S.C. 1715z and 1715z–1),

(ii) Below market interest rates provided under section 221(d) (3) of the National Housing Act (12 U.S.C. 1715–1),

(iii) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (79 Stat. 451, 12 U.S.C. 1701s),

(iv) Grants under section 713(a) and loans under section 714(a) of title VII of the Housing and Urban Development Act of 1970 (Public Law 91–609, 84 Stat. 1791) to assist in financing new community development programs.

(h) *HUD.* The Secretary of Housing and Urban Development (or, prior to Nov. 9, 1965, the Housing and Home Finance Administrator) or an officer or employee duly authorized to perform the functions of the Secretary or Administrator.

(i) *Initiation of negotiations.* The initial written offer made by the acquiring agency to the owner of real property to be acquired for a project of the amount established by such agency as just compensation for such property in accordance with § 42.135(a) (3).

(j) *Mortgage.* Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(k) *Person.* Any individual, family, partnership, corporation, or association. For purposes of an alternate payment under § 42.80 and a replacement housing payment under §§ 42.90 and 42.95, two or more individuals (not a family) living together in, and displaced from, a single dwelling, shall be regarded as one person.

(l) *Personal property (tangible personal property).* (1) Tangible property which is situated on the real property vacated or to be vacated by a displaced person and which is considered personal property and is noncompensable (other than for moving expenses) under the State law of eminent domain, and (2) in the case of a tenant, fixtures and equipment, and other property which may be characterized as real property under State or local law, but which the tenant may lawfully, and at his election determines to, move and for which the tenant is not compensated in the real property acquisition. In the case of an owner of real property, the determination as to whether an item of property is personal or real shall depend upon how it is identified in the acquisition appraisals and the closing or settlement statement with respect to the real property acquisitions: *Provided,* That no item of property which is compensable under State and local law to the owner of real property in the real property acquisition may be treated as tangible personal property in computing actual direct losses of tangible personal property under § 42.70.

(m) *Plan.* (1) A duly approved formal plan, as exists from time to time, for any project as defined in this part and any action program implementing such plan, or (2) in the case of a project for which no formal plan is required, the application by the State agency as approved by HUD and modified from time to time.

(n) *Project.* Any undertaking which receives Federal financial assistance and to which the Act is applicable pursuant to § 42.25.

(o) *Project area.* An area which HUD has approved for the carrying out of project activities.

(p) *Relocation payment.* A payment specified under §§ 42.65 through 42.95.

(q) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(r) *State agency.* The National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States. Unless otherwise indicated in the context of a specific provision of these regulations, the term "State agency" as used in these regulations shall mean the particular State agency to which Federal financial assistance is made available for a specific project.

(s) *Voluntary rehabilitation.* Structural or other substantial repairs to, or alterations to, or demolition of, any building or other improvement on land within a project area, undertaken by an owner in order to conform to the property rehabilitation standards or other applicable provisions set forth in the applicable Plan.

§ 42.25 Applicability of regulations.

(a) *Applicability of the regulations in this part.* The regulations in this part are applicable to all acquisition or displacement occurring on or after January 2, 1971 and prior to July 1, 1972, to the extent that a State agency has furnished HUD with satisfactory assurances under § 42.30 with respect to the federally assisted activity under which said acquisition or displacement takes place. Where, as of January 2, 1971, a State agency was not legally empowered under State law to make such assurances, to the extent that the State agency subsequently becomes so empowered and furnishes such assurances, the regulations in this part shall apply to displacement or acquisition occurring on or after the date the State agency becomes legally empowered to make such assurances.

(b) *Applicability of previously published regulations.* The regulations covering Relocation Payments appearing at Part 41 of this subtitle shall apply to (1) displacement occurring on or after September 10, 1970, and prior to January 2, 1971, and (2) displacement occurring on or after January 2, 1971, and prior to July 1, 1972, to the extent that the regulations issued hereunder do not, pursuant to paragraph (a) of this section, apply.

(c) *Continuation of rights and liabilities.* Nothing in paragraph (a) or (b) of this section shall be deemed to affect any rights or liabilities in existence as of January 2, 1971, under any laws repealed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

§ 42.30 Assurances.

(a) *Displacement.* As a condition to any grant, contract, or agreement approved by HUD on or after January 2, 1971, under which Federal financial assistance will be available to pay all or part of the cost of any undertaking which will result in the displacement of any person on or after such date, a State agency shall to the extent it is authorized under State law, submit assurances (either separately or by contract) satisfactory to HUD that with respect to such displacement—

(1) Relocation payments shall be provided to displaced persons in accordance with §§ 42.65 through 42.95;

(2) Relocation assistance programs offering the services described in Subpart C shall be provided to such displaced persons;

(3) Within a reasonable period of time prior to displacement, decent, safe and sanitary replacement dwellings will be available to displaced persons in accordance with § 42.120;

(4) Affected persons will be adequately informed of the benefits, policies and procedures provided in these regulations; and

(5) The relocation process will be carried out in such a manner as to provide displaced persons with uniform and consistent services, and replacement housing under § 42.120 will be available and the same range of choices with respect to such housing will be offered to all displaced persons regardless of race, color, religion or national origin pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3501 et seq.), and Executive Order 11063 (27 F.R. 11527).

An assurance with respect to displacement filed on or before the 30th day following issuance of the regulations in this part shall be deemed satisfactory notwithstanding its failure to include subparagraphs (4) and (5) of this paragraph.

(b) *Acquisition.* As a condition to any grant, contract, or agreement approved by HUD on or after January 2, 1971, under which Federal financial assistance will be available to pay all or a part of the cost of any undertaking which will result in the acquisition of real property on or after such date the State agency shall, to the extent it is authorized under State law, submit assurances (either separately or by contract) satisfactory to HUD that with respect to such acquisition:

(1) It will, to the greatest extent practicable under State law, be guided by the land acquisition policies and provisions in § 42.135;

(2) Property owners will be paid or reimbursed for necessary expenses specified in §§ 42.140 and 42.145; and

(3) Affected persons will be adequately informed of the benefits, policies and procedures provided in the regulations in this part.

An assurance with respect to acquisition filed on or before the 30th day following issuance of the regulations in this part shall be deemed satisfactory notwithstanding its failure to include subparagraph (3) of this paragraph.

§ 42.35 Federal share of costs of relocation payments and assistance.

Payments made and assistance provided in accordance with Subparts B and C of this part and §§ 42.140 and 42.145, and pursuant to a grant, loan, contract, or agreement for Federal financial assistance for a project, shall be included as a part of the cost of such project and shared in the same manner and to the same extent as other program or project costs: *Provided,* That, where such Federal financial assistance is by loan, HUD shall loan the full amount of the first $25,000 of the cost to the State agency for providing such payments and assistance to an eligible displaced person or a person from whom property is acquired, and where such Federal financial assistance is by grant or contribution HUD shall pay

the first $25,000 of such costs with respect to an eligible displaced person or a person from whom property is acquired on account of displacement or acquisition occurring prior to July 1, 1972.

§ 42.40 Payments in condemnation proceedings and negotiated purchases.

No payment shall be made under the regulations in this part which would duplicate a payment received by a displaced person or owner under the State law of eminent domain, and which is included in an award in eminent domain or in the purchase price for any property acquired by negotiation, if such payment so received is determined by HUD to have the same purpose or effect as a payment under this part.

Subpart B—Relocation Payments

§ 42.45 Purpose.

The purpose of this subpart is to set forth the types of, and specific eligibility criteria for, relocation payments to displaced persons.

§ 42.50 Relocation payments by State agency.

The State agency shall make relocation payments to or on behalf of eligible displaced persons in accordance with and to the full extent permitted by §§ 42.65 through 42.95.

§ 42.55 Basic eligibility conditions.

(a) *General.* A person qualifies as a displaced person for purposes of establishing basic eligibility for a relocation payment if:

(1) Such person moves from real property within the project area or moves his personal property from such real property (i) on or after the date of the pertinent contract for Federal financial assistance for a project, or in the case of the low rent public housing program, the date of tentative site approval by HUD, if it is later, or (ii) on or after the date of HUD approval of a budget for project execution activities resulting in displacement, provided that the contract for Federal financial assistance for the contemplated project is thereafter executed, and (iii) for purposes of the model cities program, on or after the dates specified in subdivision (i) of this subparagraph or, if the displacement occurs prior to the approval of the contract for Federal financial assistance, on or after the date approved by HUD for a specific undertaking upon the request of the State agency, provided that a contract for Federal financial assistance is thereafter executed and provided further that the comprehensive city demonstration program thereafter approved identifies the undertaking as one being carried out in connection with such program, and

(2) Such person is displaced as a result of (i) the acquisition of such real property, in whole or in part, for a project as further provided in paragraph (b) of this section, or (ii) code enforcement, voluntary rehabilitation, improvement of private property, or demolition, as provided in paragraphs (c), (d), and (e) of this section; or

(3) Such person who moves from real property, or moves his personal property from real property on or after the applicable date specified in subparagraph (1) of this paragraph as a result of displacement (as specified in subparagraph (2) of this paragraph) from other real property on which such person conducts a business or farm operation: *Provided,* That such person shall be deemed a displaced person solely for the purpose of qualifying for the following payments: (i) Actual reasonable moving expenses under § 42.65, (ii) actual direct losses of personal property under § 42.70, (iii) actual reasonable expenses in searching for a replacement business or farm under § 42.75, (iv) an alternate payment for individuals and families under § 42.80, and (v) relocation advisory assistance under Subpart C of this part.

(b) *Displacement by acquisition.* Displacement as a result of the acquisition of real property includes displacement which is a result of:

(1) The obtaining by the acquiring agency of title to or the right to possession of such real property for a project;

(2) The written order of the acquiring agency to vacate such property for a project; or

(3) The receipt of a written notice from the acquiring agency of its intent to acquire the real property for such project, provided that such acquisition thereafter takes place.

Displacement as a result of acquisition of real property in the urban renewal, neighborhood development, and model cities programs shall include displacement which is a result of the acquisition of real property by a State agency other than the State agency receiving Federal financial assistance as defined in § 42.20(g), to the extent that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is not applicable to such other State agency in connection with such displacement, and if the acquisition is undertaken in accordance with the plan for the project, or, in the case of the model cities program, if the comprehensive city demonstration program identifies the acquisition as being carried out in connection with such program.

(c) *Displacement by code enforcement and voluntary rehabilitation*—(1) *Urban renewal, neighborhood development, and code enforcement programs.* A person shall be deemed displaced by code enforcement or voluntary rehabilitation under the urban renewal, neighborhood development, and code enforcement programs if the vacation of the real property is the result of code enforcement, as further specified in subparagraph (3) of this paragraph, or of voluntary rehabilitation, as further specified in subparagraph (4) of this paragraph, with respect to the property occupied and if such activities are undertaken in accordance with the plan.

(2) *Model cities program.* A person shall be deemed displaced by code enforcement or voluntary rehabilitation under the model cities program if the vacation of the real property is the result of code enforcement, as specified in subparagraph (3) of this paragraph, or of voluntary rehabilitation activities, as further specified in subparagraph (4) of this paragraph, with respect to the property occupied and if such activities are undertaken in accordance with the comprehensive city demonstration program which identifies the undertaking as being carried out in connection with such program.

(3) *Code enforcement*—(i) *Tenants.* A tenant shall be deemed to be displaced as a result of code enforcement if the vacating of real property occurs on or after:

(*a*) The receipt of a notice to vacate from the owner on the ground that code enforcement activities will be undertaken; or

(*b*) The commencement of code enforcement activities: *Provided,* That the State agency shall have concluded, in accordance with HUD policies and requirements, either:

(*1*) That the owner has increased the rent or has notified the tenant of an increase in rent amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the State agency for the persons' ability to pay, or

(*2*) That the code enforcement could not reasonably be undertaken without the vacation of the real property by the tenant; or

(*c*) A notice from the owner or the State agency that code enforcement activities will be required: *Provided,* That the State agency shall have concluded, in accordance with HUD policies and requirements, that such tenant has moved in reasonable anticipation of such code enforcement activities and has made either of the findings required under (*b*) (*1*) or (2) of this subdivision (i).

(ii) *Owners.* An owner of real property shall be deemed displaced as a result of code enforcement if the vacating of the real property occurs on or after the receipt of notice from the State agency that code enforcement will be required and the State agency concludes, in accordance with HUD policies and requirements, that (*a*) the code enforcement has been accomplished, and (*b*) the code enforcement could not reasonably have been undertaken without the vacation of the real property by the owner.

(4) *Voluntary rehabilitation*—(i) *Tenants.* A tenant shall be deemed to be displaced as a result of voluntary rehabilitation if the vacating of real property occurs on or after:

(*a*) The receipt of a notice to vacate from the owner on the ground that voluntary rehabilitation will be undertaken; or

(b) The commencement of voluntary rehabilitation: *Provided,* That the State agency shall have concluded in accordance with HUD policies and requirements either:

(1) That the owner has increased the rent or has notified the tenant of an increase in rent amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the State agency for the person's ability to pay, or

(2) That the voluntary rehabilitation could not have reasonably been undertaken without the vacation of the real property by the tenant; or

(c) The receipt of a notice from the owner or the State agency that voluntary rehabilitation will be required: *Provided,* That the State agency shall have concluded, in accordance with HUD policies and requirements, that such tenant has moved in reasonable anticipation of such voluntary rehabilitation and has made either of the findings required under (b) (1) or (2) of this subdivision (i).

(ii) *Owners.* An owner of real property shall be deemed displaced as a result of voluntary rehabilitation if the vacating of the real property occurs on or after the commencement of voluntary rehabilitation and the State agency concludes, in accordance with HUD policies and requirements, that (a) the voluntary rehabilitation has been accomplished, and (b) the voluntary rehabilitation could not reasonably have been undertaken without the vacation of the real property by the owner.

(d) *Displacement by improvement of private properties in the interim assistance program.* A person shall be deemed displaced by the improvement of private property under the interim assistance program if the vacating of the real property is the result of:

(1) Improvement with respect to the property occupied and undertaken in accordance with the plan; and

(2) Where the displaced person is a tenant, the vacating of real property occurs on or after:

(i) The receipt of a notice to vacate from the owner on the ground that such improvement will be undertaken, or

(ii) The commencement of such improvement: *Provided,* That the State agency shall have concluded, in accordance with HUD policies and requirements, either (a) that the owner has increased the rent or has notified the tenant of an increase in rent amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the State agency for the person's ability to pay, or (b) that such improvement could not have reasonably been undertaken without the vacation of the real property by the tenant, or

(iii) A notice from the owner or the State agency that the improvement will be required: *Provided,* That the State agency shall have concluded, in accordance with HUD policies and requirements, that such tenant has moved in reasonable anticipation of such improvement and has made either of the findings required under (a) or (b) of subdivision (ii) of this subparagraph (2), or

(3) Where the displaced person is an owner, if the vacating of the real property occurs on or after the commencement of such improvement and the State agency concludes, in accordance with HUD policies and requirements, that (i) the improvement has been accomplished, and (ii) the improvement could not reasonably have been undertaken without the vacation of the real property by the owner.

(e) *Displacement by demolition.* A person shall be deemed displaced as a result of demolition if the vacating of real property is the result of demolition undertaken in accordance with the plan for a project, and occurs on or after the date on which the State agency has ordered the real property to be vacated and demolished under State and local law on the ground that it is structurally unsound or unfit for human habitation.

§ 42.60 Filing of claims.

(a) *General.* All claims shall be submitted to the State agency on the appropriate HUD form, supported by such documentation as may be required by the specific provisions of the regulations in this part applicable to the payment claimed, and by such other documentation as may be required by the State agency.

(b) *Time for filing claims.* Any claim for a payment (other than a claim for a replacement housing payment for homeowners under § 42.90) shall be submitted to the State agency within a period of 6 months after displacement of the claimant, the publication of the regulations in this part, or the filing of assurances under § 42.30, whichever is later. Any claim for a replacement housing payment for homeowners under § 42.90 shall be submitted to the State agency within a period of 18 months after the displacement of the claimant, or 6 months after the publication of the regulations in this part or the filing of assurances under § 42.30, whichever is later.

§ 42.65 Actual reasonable moving expenses.

(a) *General.* A State agency shall make a payment to a displaced person who satisfies the pertinent eligibility requirements of § 42.55 and the requirements of paragraph (b) of this section, for actual reasonable expenses specified below and determined in accordance with paragraph (c) of this section for moving himself, his family, business, farm operation or other personal property:

(1) Transportation not to exceed a distance of 50 miles from the site from which displaced, except where the State agency determines in accordance with HUD policies and requirements that relocation beyond such distance of 50 miles is justified;

(2) Packing and crating personal property;

(3) Obtaining (including advertising for) bids or estimates for such transportation, packing, and crating;

(4) Such storage of personal property, for a period generally not to exceed 6 months, as the State agency determines to be necessary in connection with relocation;

(5) Insurance of personal property while in storage or transit;

(6) Disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment or other personal property (including goods and inventory kept for sale) not acquired by the State agency: *Provided,* That the cost of any addition, improvement, alteration, or other physical change in or to any structure in connection with effecting such reassembly, reconnection or reinstallation shall not be included as a moving expense unless the State agency determines, with prior HUD concurrence, that such addition, improvement, alteration, or other physical change is required by law or ordinance or is necessary to the reinstallation of such personal property;

(7) The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the displaced person, his agent or employee) in the process of moving, where such loss, theft, or damage is not covered by insurance; and

(8) Where an item of personal property which is used in connection with any business or farm operation is not moved but is replaced with a comparable item, reimbursement in an amount not to exceed the replacement cost, minus any proceeds received from the sale, or the estimated cost of moving, whichever is less.

(b) *Requirements—Moving a business or farm operation.* Except as provided in this paragraph, no payment for actual reasonable moving expenses shall be made to a displaced person for moving his business or farm operation unless:

(1) The State agency has received, at least 30 days (or such earlier date as the State agency may determine necessary, but not earlier than 90 days) prior to the moving date, written notice from such displaced person of his intention to move or dispose of personal property used in connection with such business or farm operation (which property shall be described generally in the notice), and the date of such intended move or disposition; and

(2) The displaced person has permitted, at all reasonable times, the inspection by or on behalf of the State agency of such property at the site from which the business or farm operation is displaced. For the purpose of this subsection, "moving date" shall mean the date on which the first item of such property is intended to be moved or disposed of. The State agency may make

a relocation payment notwithstanding nonreceipt of such timely notice only if the agency has determined that there was reasonable cause for the failure of the displaced person to give such notice, and the agency has adequately verified the facts pertaining to the move or disposition and the requested relocation payment.

(c) *Limitations*—(1) *Self moves.* Where the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of accomplishing the move commercially, except for such satisfactorily documented claims in a greater amount as are determined by the State agency, in accordance with HUD policies and requirements, to be justified.

(2) *Temporary moves—individuals or families.* For the purposes of this section, the cost to a State agency in connection with moving a displaced person into temporary housing shall, notwithstanding any other provisions of § 42.35 with respect to the Federal share of costs of relocation payments and assistance, be included as a project cost in the same manner and to the same extent as other program or project cost: *Provided,* That if the displaced person elects, in accordance with § 42.120(c)(4), to receive an alternate payment under § 42.80 at the time of the move into temporary housing, the Federal share of the cost of such payment to the State agency shall be paid in accordance with § 42.35 and the cost to the State agency in connection with the move of such person into permanent replacement housing shall be included as a project cost in the same manner and to the same extent as other program or project costs, notwithstanding any other provision of § 42.35.

(3) *Payment not to exceed low bid—Business or farm operations.* Payment to a displaced person for moving expenses shall not exceed the amount of the low bid submitted in accordance with paragraph (d)(2) of this section unless submission of bids is not, under paragraph (d)(2), required.

(4) *Personal property of low value and high bulk—Businesses or farm operations.* Where, in the judgment of the State agency, the cost of moving any item of personal property of low value and high bulk which is used in connection with any business or farm operation would be disproportionate in relation to its value, the allowable reimbursement for the expense of moving such property shall not exceed the difference between the cost of replacing the same with a comparable item available on the market and the amount which would have been received for such property on liquidation. This subparagraph shall apply to such situations as the moving of junkyards, stockpiles, sand, gravel, minerals, and metals.

(d) *Documentation in support of a claim*—(1) *All claimants.* A claim for a payment under paragraph (a) of this section shall be supported by a bill or other evidence of expenses incurred. By prearrangement between the State agency, the site occupant, and the mover, evidenced in writing, the claimant or the mover may present an unpaid moving bill to the State agency, and the agency may pay the mover directly.

(2) *Businesses and farm operations.* Each claim in excess of $500 for the costs incurred by a displaced person for moving his business or farm operation shall be supported by a bid (unless otherwise provided in this section), submitted to the State agency at least 15 days prior to the commencement of the move, from three reputable firms covering the moving costs involved. Whenever it is not feasible to obtain three bids for any category of work, a lesser number of bids shall be submitted, together with a written justification by the displaced person; and no relocation payment shall be allowed in such cases unless the State agency has approved the justification. Where such bid requirement cannot be complied with under State law, or where estimates in an amount of less than $500 were obtained in good faith by the displaced person, such claim shall be supported by estimates in lieu of bids.

§ 42.70 Actual direct losses of tangible personal property.

(a) *General.* A State agency shall make a payment to a displaced person who satisfies the pertinent eligibility requirements of § 42.65 and the requirements of paragraph (b) of this section, for actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, in an amount determined by the State agency in accordance with paragraphs (c) and (d) of this section.

(b) *Requirements for payment.* No payment shall be made to a displaced person for actual direct loss of property unless such displaced person (1) complies with the requirements of § 42.65(b) with respect to actual reasonable moving expenses except as provided in said section, and (2) makes a bona fide effort to sell the personal property for which such actual direct loss is claimed.

(c) *Determining actual direct loss of property.* (1) Subject to the limitations of paragraph (d) of this section, the amount of actual direct loss of any item of property claimed shall be determined as follows:

(i) Except as provided in subparagraph (2) of this paragraph (c), the fair market value of the property for continued use at its location prior to the displacement shall be ascertained by an appraisal either secured by the claimant and concurred in by the State agency, or secured by the State agency and concurred in by the claimant.

(ii) If the value of the property for which actual direct loss is claimed does not warrant the expenses of an appraisal, then its fair market value for such continued use shall be computed as follows: The original cost of the item to the claimant (exclusive of installation) multiplied by the figure obtained by dividing the period of the remaining useful life of the property at the date of removal by the period of the normal useful life of the property at the date of its acquisition by the claimant.

(iii) The property shall be disposed of by a bona fide sale (as determined by the State agency) at the highest price offered after reasonable efforts have been made over a reasonable period of time to interest prospective purchasers. A trade-in of the property may be considered a bona fide sale, and the trade-in allowance, exclusive of any amount of discount that would be allowed on the price of the property being acquired in the absence of the trade-in, shall be the amount realized upon the sale of the property.

(iv) If the amount realized from the sale, after deducting ordinary and reasonable expenses of the sale, is less than the fair market value for such continued use, the difference between the net amount realized and the fair market value is the amount of actual direct loss of the property.

(2) If a bona fide sale is not effected because no offer is received for the property, after reasonable efforts have been made over a reasonable period of time to sell it, then its fair market value for continued use, ascertained as provided in this section, is the amount of actual direct loss of the property.

(d) *Limitations.* (1) The amount of payment for actual direct loss of any item of property shall not exceed the amount determined in accordance with paragraph (c) of this section or the estimated amount that would have been required to relocate such property, whichever is less.

(2) No payment shall be made under this section for any item of personal property sold or traded in and replaced with a substitute item. However, nothing in the preceding sentence shall preclude a payment for moving expenses, in accordance with § 42.65(a)(8), with respect to the replacement of such item.

(3) The cost of an initial appraisal to determine actual direct loss of property shall, notwithstanding any other provision of § 42.35 with respect to Federal share of costs, be included as a project cost in the same manner and to the same extent as other program or project costs. No payment shall be made under these regulations for the cost of any appraisal made subsequent to such initial appraisal.

(e) *Documentation in support of a claim.* A claim for payment under paragraph (a) of this section shall be supported by written evidence of loss of tangible property which may include appraisals, certified prices, copies of bills of sale, receipts, canceled checks, copies of advertisements, offers to sell, auction records, and such other records as may be appropriate to support the claim.

§ 42.75 Actual reasonable expenses in searching for a replacement business or farm.

A displaced person who satisfies the pertinent eligibility requirements of § 42.65 with respect to actual reasonable moving expenses, is eligible for actual

reasonable expenses, in an amount not to exceed $500 unless the State agency determines that a greater amount is justified, in searching for a replacement business or farm, including expenses incurred for: (a) Transportation; (b) meals and lodging away from home; (c) time spent in searching, based on the hourly wage rate of the salary or earnings of the displaced person or his representative, but not to exceed $10 per hour; and (d) fees paid to a real estate agent or broker to locate a replacement business or farm.

§ 42.80 Alternate payments—individuals and families.

(a) *General.* A person or family, who is displaced from a dwelling who is eligible for a payment for actual reasonable moving expenses under § 42.65, may elect to receive and shall be paid, in lieu of such payment: (1) A moving expense allowance not to exceed $300 and determined in accordance with approved Federal Highway Administration schedules established by the State in which the displacement occurred, and (2) a dislocation allowance of $200.

(b) *Limitations—joint occupants of single-family dwellings.* If individuals (not a family) who are joint occupants of a single-family dwelling submit more than one claim, an eligible claimant for a payment under paragraph (a) of this section may be paid only his reasonable prorated share (as determined by the State agency) of the total payment applicable to a single individual, and the total of alternate payments made to all such claimants moving from such dwelling shall not exceed the total fixed payment applicable to a single individual.

§ 42.85 Alternate payments—businesses and farm operations.

(a) *General.* A displaced person who is displaced from his place of business or farm operation and is eligible for payments under § 42.65, § 42.70, or § 42.75 and complies with the requirements set out in paragraph (b) of this section may elect to receive and shall be paid, in lieu of such payments, a payment equal to the average annual net earnings of the business or farm operation as determined in accordance with paragraph (d) of this section, except that such payment shall be not less than $2,500 nor more than $10,000. For purposes of this section, the dollar limitation specified in the preceding sentence shall apply to a single business, regardless of whether it is carried on under one or more legal entities.

(b) *Requirements—businesses.* In the case of a business, no payment shall be made under this section unless the State agency determines that (1) the business cannot be relocated without a substantial loss of its existing patronage, based on a consideration of all pertinent circumstances including such factors as the type of business conducted, the nature of the clientele, and the relative importance to the displaced business of its present and proposed location; (2) the business is not part of a commercial enterprise having another establishment which is not being acquired for a project and which is engaged in the same or similar business; and (3) the business contributes materially to the income of the displaced owner.

(c) *Determination of number of "businesses."* In determining whether one or more legal entities constitute a single business, the following factors, among others, shall be considered:

(1) The extent to which the same premises and equipment are shared;

(2) The extent to which substantially identical or intimately interrelated business functions are pursued and business and financial affairs are commingled;

(3) The extent to which such entities are held out to the public, and to those customarily dealing with such entities, as one business; and

(4) The extent to which the same person or closely related persons own, control or manage the affairs of the entities.

(d) *Determination of "average annual net earnings."* "Average annual net earnings" for the purpose of this section shall be computed on the basis of the net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding displacement (or if the business or farm was not in operation that long, such other period as may be approved by the State agency), and includes salaries, wages, or other compensation paid by the business or farm operation to the owner, his spouse or his dependents. If the State agency determines that such 2-year period is not equitable for establishing earnings, the period used for determining average annual net earnings shall be a substitute period determined by the State agency to be representative.

(e) *Determination of ownership.* The term "owner" as used in this section includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by the State agency. For purposes of determining a principal stockholder, stock held by a husband, his wife and their dependent children shall be treated as one unit.

(f) *Documentation in support of a claim.* A claim for payment under paragraph (a) of this section shall be supported by such reasonable evidence of earnings as may be approved by HUD. If no other evidence is available, such claim shall be supported by copies of Federal income tax returns.

§ 42.90 Replacement housing payments for homeowners.

(a) *General.* A State agency shall make to a displaced person who is displaced from a dwelling and who satisfies the pertinent eligibility requirements of § 42.55 and the conditions of paragraph (b) of this section, a payment not to exceed a combined total of $15,000 for:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired for the project equals the reasonable cost (as determined in accordance with paragraph (c)(1) of this section) of a comparable replacement dwelling: *Provided,* That such amount shall not exceed the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(2) The amount, if any, to compensate the displaced person for any increased interest costs, as determined in accordance with paragraph (c)(2) of this section, which such displaced person is required to pay for financing the acquisition of a replacement dwelling: *Provided,* That no such payment shall be made unless the dwelling acquired by the State agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for acquisition of such dwelling.

(3) Reasonable expenses, determined in accordance with paragraph (c)(3) of this section, incurred by the displaced person incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) *Eligibility conditions.* (1) A displaced person is eligible for the payments specified in paragraph (a) of this section if such displaced person: (i) Is displaced from a dwelling acquired for a project, or demolished (in accordance with local code) in connection with a project; (ii) has actually owned and occupied such dwelling for not less than 180 days prior to the initiation of negotiations for its acquisition; (iii) purchases and occupies a replacement dwelling which is decent, safe, and sanitary within 1 year subsequent to the date on which he received final payment from the State agency of all costs of the acquired dwelling or the date on which he moves from the acquired dwelling, whichever is later.

(2) For the purpose of this paragraph (b), a person has "owned" a dwelling if he (i) held fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from date of acquisition of the property for the project, (ii) held an interest in a cooperative housing project which includes the rights of occupancy of a dwelling unit therein, (iii) is the contract purchaser of any of the foregoing estates or interests, or (iv) has a leasehold interest with an option to purchase.

(3) In the case of demolition in connection with a project the term "initiation of negotiations" shall mean, for the purposes of this paragraph (b), the date such person vacates the dwelling.

(4) The term "Purchases", for the purpose of this paragraph (b), includes the acquisition, construction or rehabilitation of a dwelling, the purchase and rehabilitation of a substandard dwelling, the relocation or relocation and rehabilitation of an existing dwelling, or the entering into a contract to purchase, or for the construction of, a dwelling to be constructed on a site to be provided by a builder or developer or on a site which the displaced person owns or acquires for such purpose. Where completion of construction, rehabilitation, or relocation of

a replacement dwelling is delayed, for reasons beyond control of the displaced person, beyond the date by which occupancy is required under this paragraph (b), the State agency may determine the date of occupancy to be the date the displaced person enters into a contract for such construction, rehabilitation, or relocation or for the purchase, upon completion, of a dwelling to be constructed or rehabilitated if, in fact, the displaced person occupies the replacement dwelling when the construction or rehabilitation is completed.

(5) Where, for reasons of hardship and beyond the control of the displaced person, such person is unable to occupy the replacement dwelling by the date by which occupancy is required under this paragraph (b), the State agency may determine the date of occupancy to be the date on which the displaced person became entitled to possession of such dwelling: *Provided,* That the displaced person occupies the replacement dwelling within such reasonable period of time as shall be determined by HUD.

(c) *Computation of replacement housing payment*—(1) *Cost of comparable replacement dwelling.* The cost of a comparable replacement dwelling for purposes of paragraph (a)(1) of this section, shall be determined by one of the following methods:

(i) *Schedule method.* In accordance with a schedule as specified in § 42.160, which establishes the reasonable acquisition cost for comparable replacement dwellings;

(ii) *Comparative method.* On a case-by-case basis by determining the sales price (together with any adjustments necessary to reflect the market sale experience) of one or more dwellings which have been selected, by the State agency or by the displaced person with the approval of the State agency, and which are most representative of the acquired dwelling unit and meet the definition of "comparable replacement housing" set out in § 42.20(b): *Provided,* That this method shall be used solely at the option of the displaced person; or

(iii) *Alternative to schedule or comparative method.* Where the State agency determines that neither the schedule or the comparative method is feasible in a given situation, by the use of such other method as may be approved by HUD.

(2) *Interest payments.* Interest payments shall be equal to the difference between (i) the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling, limited to the unpaid balance of the mortgage on the acquired dwelling over its remaining term at the time of acquisition, and reduced to discounted present value, and (ii) the aggregate interest and other debt service costs paid on the mortgage on the acquired dwelling. In making such computation, the aggregate interest and other debt service costs with respect to the replacement dwelling shall not exceed the prevailing interest rate currently charged by the mortgage lending institutions in the general area in which the replacement dwelling is located. The discount rate for computing the present worth of future payments of increased interest shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. (An example of computation of payment for increased interest cost is set forth below as Appendix A to this part.)

(3) *Expenses incident to the purchase of the replacement dwelling.* Such payments shall be the amount necessary to reimburse the displaced person for actual costs incurred by him incident to the purchase of the replacement dwelling, including:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges paid incident to recordation.

(ii) Lender, FHA or VA appraisal.

(iii) FHA or VA application fee.

(iv) Certification of structural soundness.

(v) Credit report.

(vi) Owner's and mortgagee's evidence or assurance of title.

(vii) Escrow agent's fee.

(viii) Sales or transfer taxes.

No reimbursement shall be made for any fee, cost, charge, or expense which is determined to be a part of the debt service or finance charge under title I of the Truth in Lending Act (Public Law 90-321), and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

(d) *Limitation — joint owner-occupants of single-family dwellings.* The total amount of payment under this section to individuals who were joint owner-occupants of a single-family dwelling acquired as a result of the project shall be subject to the limitation of § 42.80(b).

§ 42.95 Replacement housing payments for tenants and certain others.

(a) *General.* A State agency shall make to a displaced person who satisfies the eligibility requirements of § 42.55 and the conditions of paragraph (b) of this section, a payment not to exceed $4,000 for either:

(1) An amount, computed in accordance with paragraph (c)(1) of this section, necessary to enable such displaced person to lease or rent a comparable replacement dwelling for a period not to exceed 4 years; or

(2) An amount, computed in accordance with paragraph (c)(2) of this section, necessary to enable such displaced persons to make a downpayment (including incidental expenses described in § 42.90(a)(3)) on the purchase of a comparable dwelling: *Provided,* That if such amount exceeds $2,000, such displaced person shall equally match any such amount in excess of $2,000 in making the downpayment.

(b) *Eligibility conditions.* A displaced person is eligible for the payments specified in paragraph (a) of this section if such displaced person:

(1) Has actually and lawfully occupied the dwelling from which he is displaced for a period of not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling; and

(2) Is not eligible to receive a replacement housing payment for homeowners under § 42.90; and

(3) Where such displaced person was the owner of the dwelling, such dwelling is acquired for a project, or demolished (in accordance with local code) in connection with a project: *Provided,* That an owner displaced as a result of code enforcement (other than by demolition) or voluntary rehabilitation shall be entitled to a payment specified under paragraph (a)(1) of this section necessary to enable him to lease or rent a comparable dwelling for period of 3 months, or such longer period as is reasonably necessary to accomplish the code enforcement or rehabilitation, and the computation set out in paragraph (c)(1) of this section shall be adjusted accordingly.

In the case of code enforcement, voluntary rehabilitation, improvement of private property or demolition in connection with a project, the term "initiation of negotiations", for the purposes of this paragraph (b), shall mean the date such displaced person vacates the dwelling.

(c) *Computation of payments*—(1) *Rentals.* The amount of payment necessary to lease or rent a comparable replacement dwelling, as specified under paragraph (a)(1) of this section, shall be computed by subtracting 48 times the base monthly rental of the displaced person (as determined in accordance with subdivision (i) of this subparagraph (1)), from 48 times the comparable monthly rental for a replacement dwelling (as determined in accordance with subdivision (ii) of this subparagraph (1)).

(i) *Base monthly rental.* The base monthly rental shall be the average person for the 3-month period prior to initiation of negotiations: *Provided,* That the base monthly rental shall be the average monthly rental during such 3-month period for similar dwellings in an area not generally less desirable than that of the dwelling from which such person was displaced (hereinafter referred to as the economic rent) where (*a*) the average monthly rental paid by the displaced person is found by the State agency to be substantially higher or lower than the economic rent, (*b*) the displaced person was the owner of the dwelling from which he was displaced: *And provided further,* That where necessary to satisfy the definition under § 42.20(b)(6) of comparable replacement housing as being within the financial means of the displaced person, the amount of such base monthly rental shall not exceed 25 percent of such person's monthly income.

(ii) *Comparable monthly rental.* The comparable monthly rental shall be the amount of rental determined by the State agency under one of the following methods:

(*a*) *Schedule method.* In accordance with a schedule, as specified in § 42.160,

which establishes the average monthly rentals for comparable replacement housing;

(b) *Comparative method.* On a case by case basis by determining the average month's rent for one or more dwellings which have been selected by the State agency or by the displaced person with the approval of the State agency, and which are most representative of the acquired dwelling and meet the definition of "comparable replacement housing" set out in § 42.20(b): *Provided,* That this method shall be used solely at the option of the displaced person; or

(c) *Alternative to schedule or comparative method.* Where the State agency determines that neither the schedule or comparative method is feasible in a given situation, by the use of such other method as may be approved by HUD.

(2) *Downpayment.* The downpayment for which a payment specified under paragraph (a) (2) of this section may be made, together with any matching share which may be required, shall not exceed (i) the amount required as a downpayment for the purchase of a comparable dwelling if such purchase was financed by a conventional loan, and (ii) expenses incident to the purchase of a replacement dwelling computed in accordance with § 42.90(c) (3): *Provided,* That if the amount specified in subdivision (i) of this subparagraph (2) is less than the amount required of the displaced person as a downpayment for the purchase of a comparable dwelling financed by other than a conventional loan, such amount shall be the amount which the Secretary of Housing and Urban Development determines to be necessary for such downpayment. The full amount of a downpayment under this section shall be applied to the purchase price of the replacement dwelling and shall be shown on the closing statement.

(d) *Limitation on payments and disbursement of payments*—(1) *Joint occupants of single-family dwellings.* The total amount of payment under this section to individuals who were joint occupants of a single family dwelling acquired for the project shall be subject to the limitation of § 42.80(b).

(2) *Rental replacement housing*—(i) *Displaced owner-occupants.* Where a displaced person is not eligible for replacement housing payment under § 42.90 because he elects to rent rather than purchase a replacement dwelling, the amount of payment under paragraph (c) (1) of this section shall not exceed the amount of payment for which such displaced person would have been eligible under § 42.90 if he had purchased a replacement dwelling.

(ii) *Disbursement.* Payments in excess of $500 shall be made annually in four equal installments: *Provided,* That prior to paying each such installment, the State agency shall verify that the displaced person (so long as he remains in the general locality) is occupying decent, safe, and sanitary housing.

Subpart C—Relocation Assistance Advisory Program and Assurance of Adequate Replacement Housing

§ 42.100 Purpose.

The purpose of this subpart is to set forth requirements with respect to the development and implementation of a relocation assistance advisory program for the provision of specified services, and to prescribe the obligation of the State agency not to displace, or cause the displacement of, any person from his dwelling without adequate notice and unless adequate replacement housing is available.

§ 42.105 Relocation assistance advisory program.

State agencies shall develop and implement a relocation assistance advisory program which satisfies the requirements of § 42.115 and of title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968. Such program shall be administered so as to provide advisory services which offer maximum assistance, to minimize the hardship of displacement, and to assure that (a) all persons displaced from their dwellings are relocated into housing meeting the criteria described in § 42.120, and (b) all persons displaced from their places of business or farm operations are assisted in reestablishing with a minimum of delay and loss of earnings.

§ 42.110 Eligibility for services.

Relocation assistance advisory services shall be available to:

(a) Any person who occupies property from which he will be displaced for a project or whose personal property will be so displaced;

(b) Any person who occupies property immediately adjacent to the project and who is determined by the State agency to be caused substantial economic injury or substantial injury or threat to his health or personal safety because of the project; and

(c) Any person who moves from real property or moves his personal property from real property, because he is displaced from other real property on which he conducts a business or farm operation.

For purposes of § 42.115, any person or persons described in paragraphs (a) through (c) of this section shall be an "eligible person."

§ 42.115 Minimum requirements of relocation assistance advisory program.

Each relocation assistance advisory program undertaken pursuant to § 42.105 shall include, at a minimum, such measures, facilities, or services as may be necessary or appropriate in order to:

(a) Fully inform eligible persons under this subpart at the earliest possible date as to the availability of relocation payments and assistance and the eligibility requirements therefor, as well as the procedures for obtaining such payments and assistance;

(b) Through direct personal interview, determine the extent of the need of each such eligible person for relocation assistance;

(c) Provide current and continuing information on the availability, prices and rentals of comparable sales and rental housing, and of comparable commercial properties and locations;

(d) Assure that, within a reasonable period of time prior to displacement, there will be available adequate replacement housing meeting the criteria described in § 42.120 equal in number to the number of, and available to, such eligible persons who will be displaced;

(e) Assist any such eligible person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(f) Supply to such eligible persons information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to displaced persons;

(g) Provide other advisory services to such eligible persons, such as counselling and referrals with regard to housing financing, employment, training, health, welfare, and other assistance, in order to minimize hardships to such persons;

(h) Assist each such eligible person in completing any required applications and forms;

(i) Inform all persons who are expected to be displaced by acquisition as to the eviction policies to be pursued in carrying out the project;

(j) Insure adequate inspection of all relocation housing resources utilized by displaced persons prior to and subsequent to occupancy by such persons; and

(k) Provide any services required to insure that the relocation process does not result in different or separate treatment on account of race, color, religion, or national origin.

§ 42.120 Requirement of adequate replacement housing prior to displacement.

(a) *Availability.* No person shall be required to move from his dwelling on account of a project unless within a reasonable period of time prior to displacement there are available to such person replacement dwellings which are:

(1) Decent, safe, and sanitary;

(2) Demonstrated to be open to all persons regardless of race, color, religion, sex, or national origin in a manner consistent with title VIII of the Civil Rights Act of 1968, and available without discrimination based on source of income;

(3) In an area not subjected to unreasonable adverse environmental conditions from either natural or manmade sources, and in an area not generally less desirable nor less accessible with regard to public utilities and services, schools, churches, recreation, transportation and

other public and commercial facilities; and

(4) Reasonably accessible to the displaced person's place of employment or potential employment;

(5) Adequate in size, facilities, and amenities to accommodate the needs of the displaced person and his family; and

(6) Available on the market at a rental or price within the financial means of the displaced person, but not exceeding a rental equal to 25 percent of his income or a purchase price of 2 to 2½ times his annual income.

(b) *Reasonable offers of replacement housing.* The requirement in paragraph (a) of this section shall be deemed to have been satisfied if a person is offered and refuses without justification reasonable choices of specifically identified replacement dwellings which fully meet the criteria listed in paragraph (a) of this section.

(c) *Use of temporary housing*—(1) *General.* Subject to the prior approval of HUD, a person to be displaced from a dwelling for a project may be provided temporary housing (i) in cases of emergency or where such person is subject to economic hardship or conditions hazardous to his health or safety, or (ii) in extraordinary situations where in the absence of such temporary move, the progress of the project would be substantially delayed: *Provided,* That the following conditions are satisfied:

(*a*) Such temporary housing is decent, safe, and sanitary and within the financial means of such person;

(*b*) The State agency has determined that within 12 months of the date of the temporary move or such longer period as HUD may approve, replacement housing meeting the criteria specified in paragraph (a) of this section will be available for occupancy by such person;

(*c*) Prior to the temporary move, such person will be given a written assurance that (*1*) replacement housing meeting the criteria specified in paragraph (a) of this section will be available at the earliest possible time, but in any event not later than the date provided under (*b*) of this subdivision; (2) to the extent practicable, such replacement housing will be made available to such person on a priority basis; and (3) such person may, notwithstanding the provisions of paragraph (b) of this section, and without prejudicing any rights under paragraph (a) of this section with respect to available replacement housing, reject offers of replacement housing in the expectation of the availability of replacement housing by the time such person would have ordinarily been displaced in accordance with the construction or development schedule of the project.

(2) *Continuing obligations of State agency.* The State agency shall continue to furnish to all persons provided temporary housing under subparagraph (1) of this paragraph all relocation assistance provided for under this Subpart C.

(3) *Preservation of eligibility.* The eligibility of any person for a payment specified under any section of the regulations in this part shall not be affected by a move to temporary housing under subparagraph (1) of this paragraph.

(4) *Payment of moving costs.* Costs in connection with moving a person to such temporary housing shall be subject to the provisions of § 42.65(c)(2) with respect to actual reasonable moving expenses for temporary moves. Any person provided temporary housing under this section shall be entitled to actual reasonable moving expenses for which he is eligible under § 42.65 in connection with moving into both temporary and permanent housing: *Provided,* That such person may elect to receive an alternate payment under § 42.80 in lieu of actual reasonable moving expenses with respect to one of either of such moves.

(d) *Notice.* No person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required in paragraph (a) of this section is available) or to move his business or farm operation, without at least 90 days' written notice from the State agency acquiring the real property or ordering its demolition: *Provided,* That a shorter period of notice may be given when the State agency determines, with HUD concurrence, that a 90-day period is impracticable. In addition, State agencies shall simultaneously notify each individual tenant to be displaced as well as each owner. Where persons are expected to be displaced by code enforcement, voluntary rehabilitation or the improvement of private properties as defined in § 42.55 (c) and (d), the State agency shall take all reasonable steps to urge and assure that owners of real property give tenants to be displaced at least 90 days' written notice that the activities will take place or that the premises must be vacated (except where the continued occupancy of the dwelling constitutes a substantial danger to the health or safety of the occupants). This policy shall be included by the State agency in all notices served on property owners requiring that code enforcement work be done.

(e) *Waiver.* The requirement in paragraph (a) of this section may be waived only by the Secretary of Housing and Urban Development under the following circumstances:

(1) When displacement is necessitated by a major disaster as defined in section 102(1) of the "Disaster Relief Act of 1970" (84 Stat. 1745, Public Law 91-606); or

(2) During periods of Presidentially declared national emergencies; or

(3) Such other extraordinary or emergency situations where immediate possession of real property is of crucial importance.

§ 42.125 Coordination of relocation activities.

State agencies shall contact other Federal, State, and local governmental agencies to determine the extent of present and proposed governmental actions in or affecting the locality (or localities) which may affect the carrying out of their relocation assistance program and the availability of housing resources. State agencies shall be required to stage their project activities in a manner which assures the availability of a sufficient supply of adequate replacement housing meeting the requirements of § 42.120(a). Consideration shall be given to the relocation needs of other programs being carried out in a locality and the progress of construction or rehabilitation of replacement dwellings or other relocation accommodations.

Subpart D—Real Property Acquisition

§ 42.130 Purpose.

The purposes of this subpart is to set forth the practices to be followed with respect to acquisition of real property for a project, and to provide for payments to property owners for expenses incidental to transfer of title and, in limited situations, payments for litigation expenses.

§ 42.135 Real property acquisition practices.

(a) *General.* In order to carry out the purpose of the regulations in this part, as set out in § 42.10(b) with respect to the acquisition of real property, the State agency shall, to the greatest extent practicable under State law, be guided by the following policies in acquiring real property for any project:

(1) The State agency shall make every reasonable effort to acquire such real property expeditiously by negotiation;

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity, by reasonable advance notice in writing or otherwise, to accompany the appraiser during his inspection of the property;

(3) Before the initiation of negotiations for the acquisition of such real property, the State agency shall establish an amount it believes to be just compensation therefor. Such amount shall be the State agency's review appraiser's determination of the fair market value of the property, or if HUD concurrence is required for the property involved, the fair market value of the property concurred in by HUD. Any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the project for which such property is acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in the appraisals and in determining the compensation for the property. Promptly after the amount of just compensation is established in accordance with this paragraph, the State agency shall offer to acquire the property for the full amount so established, and shall provide the owner with a written statement of, and summary of the basis for, such amount. This summary shall include, as a minimum, identification of the real property and the estate or interest therein to be acquired, including the buildings, structures, and other improvements located upon the real

property, as well as the fixtures considered to be a part of the real property. If only a portion of the real property is to be acquired, a separate statement shall be made of the estimated just compensation for such portion to be acquired and, where appropriate, of damages or benefits to the remaining real property. The date of valuation ordinarily will be the date of the appraisal review. If there is a significant delay between the date of valuation and the date of acquisition, the appraisal shall be updated or a new appraisal obtained to reflect the value as of such later date;

(4) No owner shall be required to surrender possession of real property before the State agency pays the agreed purchase price, or deposits with the court in which the State agency has instituted a condemnation proceeding for such property, for the benefit of the owner, an amount not less than the fair market value of such property, determined in accordance with subparagraph (3) of this paragraph, or the amount of the award of compensation in the condemnation proceeding for such property;

(5) Construction or development of a project shall be so scheduled that no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by § 42.120(a) will be available) or to move his business or farm operation, without at least 90 days' written notice from the State agency of the date by which such move is required: *Provided*, That shorter notice may be given where HUD determines that such 90-day notice is impracticable;

(6) If the State agency permits an owner or tenant to occupy the acquired real property on a rental basis for a short term or for a period subject to termination by the State agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier, or 25 percent of the income of such owner or tenant, whichever is less;

(7) In no event shall the State agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action which is coercive or misleading in nature (including the offer of payments under the regulations in this part) in order to compel or induce an agreement on the price to be paid for the property;

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the State agency shall institute formal condemnation proceedings. No State agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property;

(9) If the acquisition of any part of a real property would leave its owner with an uneconomic remnant, the State agency shall offer to acquire the entire property; and

(10) In any case in which a notice is served by the State agency of its intention to acquire real property, initiation of negotiations shall occur within 90 days of the service of such notice of intention.

(b) *Real property acquisition practices (buildings, structures, and improvements).* In acquiring real property for any project, a State agency shall, to the greatest extent practicable under State law, be guided by the following policies:

(1) If the State agency acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements located thereon and which it requires to be removed from the real property or which it determines will be adversely affected by the use to which the real property will be put;

(2) For the purpose of determining just compensation to be paid for any building, structure, or other improvement required by subparagraph (1) of this paragraph to be acquired, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or other improvement at the expiration of his term, and the State agency shall pay to the tenant as compensation for such building, structure, or other improvement, the greater of:

(i) The amount which the building, structure, or other improvement contributes to the fair market value of the real property to be acquired, or

(ii) The fair market value of the building, structure, or other improvement for removal from the real property;

(3) Payment under subparagraph (2) of this paragraph shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the real property involved disclaims all interest in the improvements of the tenant. In consideration for such payment, the tenant shall assign, transfer, and release to the State agency all his right, title, and interest in and to such improvements.

Nothing in paragraph (b) (2) or (3) of this section shall deprive the tenant of any right to reject payment thereunder and to obtain payment of just compensation for his property interests as otherwise defined and provided for by applicable law.

§ 42.140 Payments—expenses incidental to transfer of title.

(a) *General.* The State agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is earlier, shall reimburse the owner, to the extent the State agency deems fair and reasonable, for expenses such owner necessarily incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the State agency;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting of title in the State agency, or the effective date of possession of such real property by the State agency, whichever is earlier.

(b) *Documentation in support of a claim.* If real property is acquired by condemnation, a claim for payment under paragraph (a) of this section shall be submitted to the State agency and supported by such documentation as may be required by the State agency. If the real property is acquired by purchase, payment shall be made at settlement of the acquisition and accounted for in the settlement statement, on the basis of such documentation as may be required by the State agency.

(c) *Time for filing claims.* Each such claim shall be submitted to the State agency within a period of 6 months after the acquisition of the property, the publication of the regulations in this part, or the filing of assurances in accordance with § 42.30, whichever is later.

§ 42.145 Payments—litigation expenses.

(a) *General.* The State agency shall reimburse the owner of any real property for the owner's reasonable costs, disbursements, and expenses of litigation, including attorney, appraisal, and engineering fees, actually incurred because of condemnation proceedings, if:

(1) In a condemnation proceeding instituted by the State agency to acquire such real property for a project, the final judgment of the court having jurisdiction over such proceeding is that the State agency cannot acquire the real property by condemnation; or

(2) Such proceeding is abandoned by the State agency other than pursuant to an agreed-upon settlement of the proposed acquisition of the property by direct purchase; or

(3) A court of competent jurisdiction renders a judgment in favor of the owner as plaintiff in an inverse condemnation proceeding or the State agency effects a settlement of such proceeding.

(b) *Limitations.* No payment under paragraph (a) of this section shall be made unless HUD is satisfied that the costs involved are reasonable and directly and necessarily related to such condemnation proceedings.

(c) *Documentation in support of a claim.* A claim for a payment under paragraph (a) of this section shall be submitted to the State agency and supported by such documentation as may be required by the State agency and HUD.

(d) *Time for filing claims.* Each claim shall be submitted to the State agency within a period of 6 months after (1) final judgment in accordance with paragraph (a) (1) or (3) of this section, or the abandonment of a condemnation proceeding by a State agency, whichever is applicable; (2) the issuance of the regulations in this part; or (3) the filing

of assurances in accordance with § 42.30, whichever is later.

§ 42.150 Effect upon property acquisition.

(a) The provisions of this Subpart D create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in these regulations shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or of damage not in existence immediately prior to January 2, 1971, the date of enactment of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Subpart E—Administration

§ 42.155 Purpose.

The purpose of this subpart is to set forth the provisions relating to the overall administration of the regulations in this part.

§ 42.160 Schedules of comparable replacement dwellings.

The State agency shall submit for HUD approval a schedule of the average price of comparable replacement dwellings in a locality, for determining the amount of replacement housing payments under §§ 42.90(a)(1) and (c)(1) and 42.95 (a)(2) and (c)(2) and a separate schedule of average monthly rentals for comparable replacement dwellings in the locality for determining payments under § 42.95(a)(1) and (c)(1). The schedules shall be consistent with the regulations in Subpart C of this part, shall be kept current and shall, to the maximum extent possible, reflect the costs set forth in schedules used by other State agencies in the locality, and shall be available in written form to all persons in the office of the State agency. If there is an insufficient supply of comparable replacement housing meeting the definition of § 42.20(b) with respect to age or state of repair, new, rehabilitated, or more recently constructed housing, including assisted housing, shall be used in developing the schedules.

§ 42.165 Notice to persons in project area.

The State agency shall furnish, at the earliest possible date, to all persons who own or occupy property within a project area (or the area of the federally assisted activities) and who are anticipated to be displaced, a notice or information statement advising them of (a) the availability of payments under these regulations to eligible persons, (b) the office where the conditions under which such payments will be made are available for inspection, and (c) the earliest date on which such persons may move and still qualify as a displaced person. The State agency shall take reasonable steps to publicize this information in language(s) and in a fashion most likely to be understood by the persons to be affected, such as by using the local media, posters in public places, and other forms of public communication.

§ 42.170 Review of claims.

The State agency is initially responsible for determining the eligibility of a claim for, and the amount of, any payment under the regulations in this part and shall maintain in its files complete and proper documentation supporting the determination. The determination on each claim shall be made or approved either by the governing body of the agency or by the principal executive officer of the agency or his duly authorized designee.

§ 42.175 Prompt payment.

A payment shall be made by the State agency as promptly as possible after a person's eligibility has been determined in accordance with the regulations in this part. Advance payments may be made in hardship cases where the State agency determines such advances to be appropriate under the regulations in this part.

§ 42.180 Agency setoff against claim.

The State agency may set off against the claim of an otherwise eligible person any financial claim the agency may have against the person arising out of the use of the real property, subject to the qualification set forth below. Before taking any setoff action, the State agency shall notify the displaced person of its intention to setoff the claim and shall advise the person that he may within 30 days file a statement denying or disputing the claim. If such statement is filed by the person, the State agency may tentatively set off the claim if it institutes within 30 days and diligently prosecutes a judicial action to obtain a judgment for the claim. Once the State agency obtains a judgment for the claim, the setoff will be deemed final. If judicial proceedings are instituted and the State agency is denied a judgment or if the State agency does not institute and prosecute proceedings as set forth above, the State agency shall pay the full amount of the relocation claim if otherwise eligible.

§ 42.185 Approval by HUD.

No claim for a payment (other than a replacement housing payment) in excess of $10,000 shall be paid without the prior concurrence of HUD.

§ 42.190 Appeals procedure—grievances.

Any person aggrieved by a determination as to eligibility for, or the amount of, a payment under the regulations in this part may have his claim reviewed or reconsidered by the head of the State agency or his authorized designee, in accordance with such procedures as the State agency shall have established for such review or reconsideration. Where such person is not satisfied by such review or redetermination, he is entitled to redetermination of his claim by HUD. Any person or class of persons may similarly seek review and revision of any schedules with respect to payments under the regulations in this part.

§ 42.195 Accounts and records.

Accounts and records shall be subject to inspection or audit at all reasonable times by HUD. Records pertaining to eligibility for payments, including all claims, receipted bills, or other documentation in support of a claim, and records pertaining to action on a claim, shall be retained by the State agency for not less than 3 years after the completion of the project. Timely and complete reports shall be submitted in accordance with HUD requirements.

§ 42.200 Payments not to be considered as income.

No payment received under these regulations by a displaced person shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

§ 42.205 Displacement in connection with more than one project.

No person shall be entitled to more than one payment under each of §§ 42.65–42.95 and §§ 42.140 and 42.145 on account of a single displacement or a single acquisition, notwithstanding that the displacement or acquisition is in connection with more than one Federal or federally assisted project.

§ 42.210 Policies and requirements of HUD.

All determinations or other actions by the State agency provided for under the regulations in this part shall be undertaken in accordance with the policies and requirements of HUD as issued from time to time.

§ 42.215 Waivers.

A waiver of any section of these regulations not required by law, may be authorized only with respect to a particular claim and by the Secretary of Housing and Urban Development or his his authorized designee after such claim has been reviewed by HUD: *Provided*, That the limitations provided in § 42.60 with respect to the time of filing of claims may be waived by the State agency for good cause with HUD concurrence.

APPENDIX A—EXAMPLE OF COMPUTATION OF PAYMENT FOR INCREASED INTEREST COST UNDER § 42.90(c)(2) [1]

DWELLING TO BE ACQUIRED

Acquisition price	$13,000.00
Existing mortgage:	
Interest rate (percent)	6
Remaining term (years)	10
Remaining principal balance	$7,296.93
Monthly principal and interest payment	$81.02
Owner's equity	$4,701.07

[1] The example of computation of payment for increased interest cost set out above appears on page 10 of H. Rept. No. 91-1656, 91st Cong., second session (Report of the Committee on Public Works, House of Representatives accompanying S.1, the proposed Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970).

AVAILABLE COMPARABLE DECENT, SAFE, AND SANITARY DWELLING

Price	$15,000.00
Prevailing interest rate (percent)	8
Supplemental payment for replacement housing cost differential	$3,000.00
Payment for increased interest cost	$700.00

COMPUTATION OF PAYMENT FOR INCREASED INTEREST COST

Monthly principal and interest cost for new mortgage of $7,295.93—for 10 years at 8 percent interest	$88.57
Monthly principal and interest cost for existing mortgage of $7,295.93—for 10 years at 6 percent interest	$81.02
Monthly interest difference	$7.55
Present worth of $7.55 monthly interest difference for 10 years, discounted at the assumed interest rate paid on savings deposits, at 5 percent	$700.00
Increased interest cost payment due property owner	$700.00

PART 81—REGULATIONS GOVERNING OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION

Sec.
81.1 Scope of part.
81.2 Common stock.
81.3 Dividends. [Reserved]
81.4 Debt to capital ratio.
81.5 Issuance of obligations.
81.6 Housing for low and moderate income families. [Reserved]
81.7 Audits.
81.8 Reports.

AUTHORITY: The provisions of this Part 81 issued under secs. 303(c), 304(b), 309(h), 311, 12 U.S.C. 1718(c), 1719(b), 1723a(h), 1723c.

§ 81.1 Scope of part.

This part is established for the codification of regulations governing the operations of the Federal National Mortgage Association (hereafter in this part called the corporation) issued and to be issued from time to time by the Secretary of Housing and Urban Development, as authorized by the Federal National Mortgage Association Charter Act (hereafter in this part called the Charter Act).

§ 81.2 Common stock.

(a) The corporation is authorized to issue shares of its common stock to each seller or borrower who makes capital contributions authorized by section 303(b) of the Charter Act. The corporation is further authorized to issue and sell additional shares of its common stock to the servicers of its mortgages, in consideration for payments by such servicers into the corporation's capital or capital and surplus for each share of an amount equal to the then current issue price of the common stock authorized to be issued by the first sentence hereof; but no such stock shall be issued to any servicer at any time in excess of its reasonably foreseeable need at such time in connection with the amount of stock required to be held pursuant to section 303(c) of the Charter Act. The authorizations of this paragraph are granted on the condition that the Secretary of Housing and Urban Development be given written notice at least 15 days in advance of any change by the corporation in the issue price of its stock issued pursuant to this paragraph.

(b) For any and all stock or convertible debt issues other than stock issued pursuant to paragraph (a) of this section, the corporation is authorized to adopt a shareholder resolution, governing all such issues and sales of shares of its common stock, or other securities convertible into the corporation's common stock, which permits the corporation to provide for or limit or deny to shareholders pre-emptive rights in all purchases of issues of such stock or securities. Such resolution shall be effective with respect to each such issue from and after the date of adoption thereof and until expressly repealed or amended by a subsequent resolution duly adopted in accordance with the procedures set forth in paragraph (c) of this section.

(c) The shareholder resolution authorized by paragraph (b) of this section shall be made in the following manner:

(1) The Board of Directors of the corporation shall adopt the proposed resolution setting forth the language thereof and directing that it be submitted to a vote at a meeting of shareholders of the corporation, which may be either an annual or a special meeting.

(2) Written notice setting forth the proposed resolution or a summary of it shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided for notices of meetings of shareholders in the bylaws of the corporation.

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed resolution. The proposed resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares of the corporation which are outstanding and entitled to vote thereon.

(d) For any issues other than stock issued as authorized by paragraph (a) of this section, the approval of the Secretary is required prior to the issuance by the corporation of any stock, obligation, security, or similar instrument.

§ 81.3 Dividends. [Reserved]

§ 81.4 Debt to capital ratio.

(a) The aggregate amount of obligations of the corporation issued under section 304(b) of the Charter Act and outstanding at any one time shall not exceed 25 times the sum of its capital, capital surplus, general surplus, reserves and undistributed earnings. For the purposes of this section, the outstanding aggregate principal amount of any obligations of the corporation issued under section 304(e) of the Charter Act which are entirely subordinated to the obligations of the corporation issued or to be issued under section 304(b) of the Charter Act shall be deemed to be capital of the corporation.

(b) In the event at any time of a reduction in the sum of the corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings, the maximum debt to capital ratio is automatically increased to such ratio as may be necessary to include all obligations issued under said section 304(b) and outstanding at such time. In the event at any time of a maturity or other event requiring the payment or redemption of any of the obligations issued under section 304(e) of the Charter Act, the maximum debt to capital ratio is automatically increased to such ratio as may be necessary to permit the issue of obligations under section 304(b) of the Charter Act in an amount sufficient to provide the proceeds required to pay the principal of and interest on the obligations outstanding under such section 304(e) and so required to be paid or redeemed at such time. As used in this section, the term "maximum debt to capital ratio" means the maximum ratio, set forth in paragraph (a) of this section or elsewhere, which may be borne to the aforesaid sum by the aggregate principal amount of the corporation's obligations issued under section 304(b) of the Charter Act and outstanding at any one time. So long as any obligations of the corporation issued under section 304(e) of the Charter Act are outstanding, no action shall be taken with respect to the debt to capital ratio provisions of this subsection which is detrimental to the holders of such obligations.

§ 81.5 Issuance of obligations.

The corporation is authorized, upon the approval of the Secretary of the Treasury, to issue its obligations and securities from time to time under subsections (b), (d), and (e) of section 304 of the Charter Act in such amounts as may be approved in writing by the Secretary of Housing and Urban Development. In the event at any time of a maturity or other event requiring the payment or redemption of any of the corporation's outstanding obligations, the corporation is hereby authorized, upon the approval of the Secretary of the Treasury, to issue its obligations and securities at such time under any of the aforesaid subsections of section 304 of the Charter Act in an amount sufficient to provide the proceeds required to pay the principal of and interest on the obligations so required to be paid or redeemed at such time.

§ 81.6 Housing for low and moderate income families. [Reserved]

§ 81.7 Audits.

The books and financial transactions of the corporation shall be made available for audit by the Secretary of Housing and Urban Development at any time requested by him.

§ 81.8 Reports.

The corporation shall make such reports concerning its activities as the Secretary of Housing and Urban Development may request.

Subtitle B—Regulations Relating to Housing and Urban Development

Chapter I—Office of Assistant Secretary for Equal Opportunity

Subchapter A—Fair Housing

Part
100 Racial and ethnic data.
105 Fair housing.

Subchapter B—Employment and Business Opportunity

130 Equal employment opportunity under HUD contracts and HUD assisted construction contracts.

SUBCHAPTER A—FAIR HOUSING

PART 100—RACIAL AND ETHNIC DATA

Sec.
100.1 Purpose.
100.2 Minority-group identification.

AUTHORITY: The provisions of this Part 100 issued under E.O. 11063, 27 F.R. 11527; sec. 602, 72 Stat. 252; 42 U.S.C. 2000d–1; sec. 808, 82 Stat. 84; 42 U.S.C. 3608; sec. 2, 48 Stat. 1246; 12 U.S.C. 1703; sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 100.1 Purpose.

The purpose of this part is to enable the Secretary to carry out his responsibilities under the provisions of Executive Order 11063, dated November 20, 1962, title VI of the Civil Rights Act of 1964, and title VIII of the Civil Rights Act of 1968 prohibiting discrimination and providing for fair housing and directing the Secretary to administer Housing and Urban Development programs and activities in a manner affirmatively to further these policies.

§ 100.2 Minority-group identification.

Participants in Housing and Urban Development programs shall furnish such information as the Secretary may require concerning minority-group identification to assist the Secretary in carrying out his responsibility for administering the national policies prohibiting discrimination and providing for fair housing.

PART 105—FAIR HOUSING

Subpart A—Purpose and Definitions

Sec.
105.1 Purpose.
105.2 Definitions.

Subpart B—Procedures for Enforcement of Complaints Against Discriminatory Housing Practices

105.11 Submission of information.
105.12 Complaints to be filed by persons aggrieved.
105.13 Where to file complaints.
105.14 Contents of complaint.
105.15 Form of complaint; amendments.
105.16 Date of filing of complaint; when notice issues.
105.17 Service of complaint; filing of answers.
105.18 Referrals to State or local fair housing agencies.
105.19 Suspension of proceedings.
105.20 Reactivation of referred complaints.
105.21 Investigation and decision to resolve.
105.22 Subpoenas, interrogatories, and investigative powers.

Subpart C—Procedures To Rectify Discriminatory Housing Practices

105.31 Conference, conciliation, and persuasion.
105.32 Conciliation agreements.
105.33 Inability to obtain voluntary compliance.
105.34 Notification where voluntary compliance is not obtained.
105.35 Confidentiality of conciliation conferences.
105.36 Other action by the Assistant Secretary.

Appendix—List of Department of Housing and Urban Development Regional Offices and Jurisdictional Areas.

AUTHORITY: The provisions of this Part 105 issued under 82 Stat. 81–89, 79 Stat. 669, 42 U.S.C. 3601–3619; 42 U.S.C. 3535(d).

Subpart A—Purpose and Definitions

§ 105.1 Purpose.

(a) The regulations set forth in this part contain the procedures established by the Assistant Secretary for Equal Opportunity in the Department of Housing and Urban Development for carrying out his responsibility with respect to any complaint filed with him under section 810 of title VIII of the Civil Rights Act of 1968, Public Law 90–284, 42 U.S.C. 3610.

(b) Where a person charged with a discriminatory housing practice in a complaint filed under section 810 of title VIII is also prohibited from engaging in similar practices under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d—2000d–5, or Executive Order 11063 of November 20, 1962, on Equal Opportunity in Housing (27 F.R. 11527–30, November 24, 1962) or other applicable law, such person may also be subject to action by the Department of Housing and Urban Development or other Federal agency under the rules, regulations, and procedures prescribed from time to time pursuant to title VI or Executive Order 11063 or other applicable law.

§ 105.2 Definitions.

As used in this part,

(a) "Assistant Secretary" means the Assistant Secretary for Equal Opportunity in the Department of Housing and Urban Development.

(b) "Department" means Department of Housing and Urban Development.

(c) "Discriminatory housing practice" means an act that is unlawful under section 804, 805, or 806 of title VIII.

(d) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(e) "Family" includes a single individual.

(f) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Title VIII" means title VIII of the Civil Rights Act of 1968, Public Law 90–284, 42 U.S.C. 3601–3619.

(i) "To rent" includes to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Subpart B—Procedures for Enforcement of Complaints Against Discriminatory Housing Practices

§ 105.11 Submission of information.

The Assistant Secretary will receive information concerning alleged violations of title VIII from any person. Where the information constitutes a complaint within the meaning of title VIII and this part, it shall be so recorded under § 105.16. Where additional information is required for purposes of perfecting a complaint under title VIII, the Department will promptly advise what additional information is needed and will provide appropriate assistance in the filing of such complaint. At the same time, if the information disclosed so warrants, appropriate enforcement procedures may be initiated by the Department under E.O. 11063 on Equal Opportunity in Housing or title VI of the Civil Rights Act of 1964, and the information may also be referred to any other Federal, State, or local agency having an interest in the matter.

§ 105.12 Complaints to be filed by persons aggrieved.

Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (in this part called "person aggrieved") may file a complaint no later than 180 days after the alleged discriminatory housing practice occurred. Such complaint may be filed with the assistance of an authorized representative of the person aggrieved, including any organization acting on behalf of the person aggrieved.

§ 105.13 Where to file complaints.

Complaints may be filed by mail with Fair Housing, Department of Housing and Urban Development, Washington, D.C. 20410, or any regional, area, or Insuring Office of the Department. Complaints will be processed through the Department's Regional Administrator having jurisdiction in the State in which the alleged discriminatory housing practice occurred or is about to occur. A list of Department Regional Offices with their addresses and areas of jurisdiction appears as an appendix to this part.

§ 105.14 Contents of complaint.

Each complaint should contain substantially the following information:

(a) The name and address of the person aggrieved.

(b) The name and address of the person against whom the complaint is filed ("respondent").

(c) A description and the address of the dwelling, which involves the alleged discriminatory housing practice.

(d) A concise statement of the facts, including pertinent dates, constituting the alleged discrimatory housing practice.

§ 105.15 Form of complaint; amendments.

Each complaint shall be in writing and signed, and shall be sworn to before a notary public, or sworn to before a duly authorized representative of the Assistant Secretary. Such attestation may be made at the time of the investigation. The Assistant Secretary may also require complaints to be made on prescribed forms. Complaint forms shall be available to all persons in any regional, area, or insuring office of the Department. Appropriate assistance in filling out forms and in filing a complaint will be rendered by personnel in any of such offices. Complaints may be reasonably and fairly amended at any time. Notwithstanding the use of the prescribed form, any written statement which substantially sets forth the allegations of a discriminatory housing practice will be accepted as a title VIII complaint.

§ 105.16 Date of filing of complaint; when notice issues.

(a) For purposes of section 810(d) of title VIII, a complaint shall be considered to be filed when it is received in such form as is found reasonably to meet the standards of §§ 105.14 and 105.15. The person aggrieved shall be notified of the date of filing and of his right to bring court action under sections 810 and 812. The 30 days provided in section 810(d) of title VIII within which a civil action may be commenced shall be deemed to begin with the receipt by the complainant of a notice from the Assistant Secretary that he does not intend to resolve the complaint or he is terminating his efforts to conciliate the matter.

(b) At any time after the expiration of 30 days from the date of the filing of a complaint, or upon dismissal of the complaint at any stage of the proceedings, the complainant may demand in writing that a notice of the occurrence of either of such events issue pursuant to section 810(d) of title VIII, and the Assistant Secretary shall promptly issue such notice, with copies to all parties. The complainant shall be advised by certified mail of the right to request such notice of the expiration of the 30-day period.

(c) In the case of a complaint referred to a State or local agency and subsequently reactivated by the Assistant Secretary pursuant to § 105.20, the person aggrieved and the respondent shall each be notified of the date of reactivation and complainant's right to request a notice under paragraph (b) of this section.

(d) Issuance of notice pursuant to paragraph (b) of this section shall suspend further proceedings by the Department unless the Assistant Secretary determines otherwise.

(e) Notwithstanding paragraph (a) of this section, a complaint may be deemed filed, for purposes of the 180-day period of section 810(b) of title VIII, upon the receipt of written information sufficiently precise to identify the parties and describe generally the action or practice complained of. Such a complaint may be amended, as provided in § 105.15, to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify allegations made therein, and any amendment shall be deemed to be made as of the original filing date.

§ 105.17 Service of complaint; filing of answers.

Upon the filing of a complaint within the meaning of § 105.16(a), and upon any amendment of such a complaint, a copy thereof shall be furnished the respondent by certified mail or through personal service by Department representatives. The respondent may file an answer to the complaint at any time prior to the expiration of 7 days after the date the complaint is received by him. The answer shall be sworn to before a notary public or sworn to before a duly authorized representative of the Assistant Secretary. With leave of the Assistant Secretary an answer may be amended at any time and sworn to as provided in this section. The Assistant Secretary will permit answers to be amended whenever he believes it would be reasonable and fair to do so.

§ 105.18 Referrals to State or local fair housing agencies.

Whenever the Assistant Secretary determines consistent with Department standards that a State or local fair housing law provides rights and remedies substantially equivalent to those provided by title VIII for a person aggrieved by a discriminatory housing practice alleged in a complaint filed with the Assistant Secretary hereunder, the Assistant Secretary shall notify the appropriate State or local agency of such complaint. The Assistant Secretary shall give the complainant and the respondent notice in writing of such referral. Notices under this section shall be by certified mail.

§ 105.19 Suspension of proceedings.

When a fair housing complaint has been referred to a State or local fair housing agency pursuant to § 105.18, then proceedings under the regulations in this part for title VIII shall be suspended and no further action shall be taken by the Assistant Secretary hereunder except as provided in § 105.20.

§ 105.20 Reactivation of referred complaints.

(a) Whenever proceedings have been suspended pursuant to § 105.19, the Assistant Secretary may reactivate the case if he certifies that in his judgment the protection of the rights of the parties or the interests of justice require such action.

(b) As a matter of policy, such certification shall be made routinely when the State or local agency has not commenced proceedings within 30 days following the referral of the complaint to it, or having commenced action has not carried forth such proceedings with reasonable promptness within the judgment of the Assistant Secretary.

§ 105.21 Investigation and decision to resolve.

(a) Within 30 days after a complaint is filed or within 30 days after reactivation by the Assistant Secretary in the case of a complaint referred to a State or local agency and subsequently reactivated pursuant to § 105.20, the Assistant Secretary shall investigate the complaint and give notice in writing to the person aggrieved and to the respondent if the Assistant Secretary intends to take further action with respect to the complaint.

(b) Notwithstanding paragraph (a) of this section, where the allegations of a complaint on their face or as amplified by the statements of the complainant, disclose that the complaint is not timely filed or otherwise fails to state a valid claim for relief under title VIII, the Assistant Secretary may dismiss the complaint without further action.

(c) If the Assistant Secretary decides not to resolve a complaint, or to dismiss it under paragraph (b) of this section, he shall advise the person aggrieved in writing of the disposition of the case. Respondent shall also be notified in any case where he has been served with a copy of the complaint.

(d) The Assistant Secretary may, in the processing of a case, utilize, with their consent, the services of State or local agencies charged with the administration of fair housing laws or of appropriate Federal agencies.

(e) Any party adversely affected by a determination under paragraph (a) or (b) of this section may, within 5 days of receipt of notice of a determination, request that the Assistant Secretary reconsider his action. Such request for reconsideration will be granted only on the basis of additional material evidence not previously available to the party requesting reconsideration or for other good cause shown.

§ 105.22 Subpoenas, interrogatories, and investigative powers.

The Assistant Secertary encourages voluntary cooperation in his investigations but will resort to the compulsory processes authorized by section 811 of title VIII when, in his judgment, such resort becomes appropriate in order reasonably to expedite handling of complaints. The provisions of section 811 of title VIII shall apply, in such cases, to the issuance and use of subpoenas by the Assistant Secretary on his own behalf or on behalf of a respondent, and to the issuance and use by the Assistant Secretary of interrogatories to a respondent; however, the legality of each such issuance shall be approved by the General Counsel. Payment of witness and mileage fees shall be made as provided for in section 811(c) in an amount allowed under the rules governing such payment by the U.S. district courts. Fees

payable to a witness summoned by subpoena issued at the request of a respondent shall be paid by respondent.

Subpart C—Procedures to Rectify Discriminatory Housing Practices

§ 105.31 Conference, conciliation, and persuasion.

If the Assistant Secretary has decided to resolve a complaint, he shall endeavor to eliminate or correct the discriminatory housing practice alleged therein by informal methods of conference, conciliation, and persuasion. These endeavors need not be terminated even if the person aggrieved has commenced a civil action in an appropriate court under title VIII, but all efforts to obtain voluntary compliance shall immediately terminate when such civil action comes to trial, unless the court specifically requests assistance from the Assistant Secretary, or directs otherwise.

§ 105.32 Conciliation agreements.

In conciliating or taking other action pursuant to § 105.31, the Assistant Secretary shall attempt to achieve a just resolution of the complaint and to obtain assurances, where appropriate, that the respondent will satisfactorily remedy any violations of the rights of the person aggrieved and will take such action as will assure the elimination of discriminatory housing practices or the prevention of their occurrence in the future. The terms of such settlement shall be reduced to a written conciliation agreement, signed by both parties, and by the Assistant Secretary or his representative. Such conciliation agreement shall seek to protect the interests of the complainant, his group, and the public interest. Written notice of disposition of a case pursuant to § 105.31 and of the terms of settlement shall be given to the parties by the Assistant Secretary or his representative. The Assistant Secretary may, from time to time, review compliance with the terms of any settlement agreement and may, upon a finding of noncompliance, take such enforcement action as is provided for under the settlement agreement or as may otherwise be appropriate.

§ 105.33 Inability to obtain voluntary compliance.

Should a respondent fail or refuse to confer with the Assistant Secretary or his representative, or fail or refuse to make a good faith effort to resolve any dispute, or should the Assistant Secretary find for any other reason that voluntary agreement is not likely to result, the Assistant Secretary may terminate his efforts to conciliate the dispute. In such event, the parties shall be notified promptly in writing that such efforts have been unsuccessful, and the complainant will be notified of his legal rights in regard to his complaint.

§ 105.34 Notification where voluntary compliance is not obtained.

The person aggrieved shall be notified in writing by registered or certified mail when the Assistant Secretary has determined that he is unable to obtain voluntary compliance through informal methods of conference, conciliation, or persuasion. The 30 days provided in section 810(d) of title VIII within which a civil action may be commenced shall be deemed to begin upon the receipt of such notice.

§ 105.35 Confidentiality of conciliation conferences.

Once the Assistant Secretary has decided to resolve a complaint under title VIII and respondent has agreed to participate in informal endeavors by the Assistant Secretary for such purposes, nothing that is said or done thereafter, during and as a part of the Assistant Secretary's endeavors to resolve the complaint by informal methods of conference, conciliation, and persuasion, may be made public, or used as evidence in a subsequent proceeding under title VIII, without the written consent of the persons concerned.

§ 105.36 Other action by the Assistant Secretary.

If voluntary compliance has not been obtained and the Assistant Secretary has terminated efforts at conciliation in a case where after evaluation of the investigation the evidence on balance indicates there has been a discriminatory housing practice, the Assistant Secretary may pursue one or more of the following courses of action:

(a) Recommend to the Attorney General of the United States that he institute a civil action under section 813 of title VIII for relief against a pattern or practice of resistance to the full enjoyment of any of the rights granted by said title or a denial of rights under the title to a group of persons raising an issue of general public importance.

(b) Refer the matter to the Attorney General for such other action as he may deem appropriate.

(c) Institute enforcement proceedings under E.O. 11063 or title VI of the Civil Rights Act of 1964, in accordance with regulations and procedures prescribed therefor.

(d) Inform any other Federal agency appearing to have an interest in the enforcement of respondent's obligations with respect to discrimination in housing.

APPENDIX—LIST OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGIONAL OFFICES AND JURISDICTIONAL AREAS

Region	Address	Jurisdictional area
I.....	Room 800 John F. Kennedy Federal Bldg., Boston, MA 02203.	Connecticut, Maine Massachusetts, New Hampshire, Rhode Island, Vermont.
II.....	26 Federal Plaza, New York, NY 10007.	New Jersey, New York, Puerto Rico, Virgin Islands.
III.....	Curtis Bldg., Sixth and Walnut Sts., Philadelphia, PA 19106.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV.....	Peachtree-Seventh Bldg., Atlanta, GA 30323.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V.....	300 South Wacker Dr., Chicago, IL 60606.	Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin.
VI.....	Federal Office Bldg., 819 Taylor St., Fort Worth, TX 76102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII.....	300 Federal Office Bldg., 911 Walnut St., Kansas City, MO 64106.	Iowa, Kansas, Missouri, Nebraska.
VIII...	Federal Bldg., 1961 Stout St., Denver, CO 80202.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX.....	450 Golden Gate Ave., Post Office Box 36003, San Francisco, CA 94102.	Arizona, California, Hawaii, Nevada, Guam, American Samoa.
X.....	Arcade Plaza Bldg., 1321 Second Ave., Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

SUBCHAPTER B—EMPLOYMENT AND BUSINESS OPPORTUNITY

PART 130—EQUAL EMPLOYMENT OPPORTUNITY UNDER HUD CONTRACTS AND HUD ASSISTED CONSTRUCTION CONTRACTS

Sec.
130.1 Purpose.
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130.80 Solicitations or advertisements for employees.
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130.90 Notices to be posted.
130.95 Program directives and instructions.
130.100 Effective date.

AUTHORITY: The provisions of this Part 130 issued under sec. 201, Executive Order 11246, 30 F.R. 12319; and 41 CFR 60-1.6(c).

§ 130.1 Purpose.

This part prescribes standards and procedures for the Department of Housing and Urban Development in the implementation of its responsibilities as a compliance agency under Executive

Order 11246; the rules and regulations of the Secretary of Labor, codified in 41 CFR Chapter 60, prescribed thereunder; and other rules, orders, instructions, designations, and directives issued by the Office of Federal Contract Compliance, Department of Labor.

§ 130.5 Definitions.

(a) "Administering agency" means any department, agency, and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) "Agency" means any contracting or any administering agency of the Government.

(c) "Applicant" means an applicant for Federal assistance from the Department involving a construction contract, or other participant in a program involving a construction contract as determined by the Department. The term also includes such persons after they became recipients of such Federal assistance.

(d) "Compliance Agency" means the agency designated by the Director on a geographical, industry, or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the order as the Director may determine to be appropriate. In the absence of such a designation the Compliance Agency will be determined as follows:

(1) In the case of a prime contractor not involved in construction work, the Compliance Agency will be the agency whose contracts with the prime contractor have the largest aggregate dollar value;

(2) In the case of a subcontractor not involved in construction work, the Compliance Agency will be the Compliance Agency of the prime contractor with which the subcontractor has the largest aggregate value of subcontracts or purchase orders for the performance of work under contracts;

(3) In the case of a prime contractor or subcontractor involved in construction work, the Compliance Agency for each construction project will be the agency providing the largest dollar value for the construction projects; and

(4) In the case of a contractor who is both a prime contractor and subcontractor, the Compliance Agency will be determined as if such contractor is a prime contractor only.

(e) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(f) "Contract" means any Government contract or any federally assisted construction contract.

(g) "Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

(h) "Department" means the Department of Housing and Urban Development.

(i) "Director" means the Director, Office of Federal Contract Compliance, U.S. Department of Labor, or any person to whom he delegates authority under the regulations of the Secretary of Labor.

(j) "Equal opportunity clause" means the contract provisions set forth in § 8.15 (a) or (b), as appropriate.

(k) "Facilities" as used in § 130.75, includes, but is not limited to waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(l) "Federally assisted construction contract" means any agreement or modification thereof between any applicant and any person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Department for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(m) "Government" means the Government of the United States of America.

(n) "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. Services, as used in this section includes, but is not limited to, the following services: Utility, construction, transportation, research, insurance, and fund depository. Government contract does not include (1) agreements in which the parties stand in the relationship or employer and employee, and (2) federally assisted construction contracts.

(o) "Hearing officer" means the individual or board of individuals designated to conduct hearings.

(p) "Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(q) "Order" means Parts II, III, and IV of Executive Order 11246, dated September 24, 1965 (30 F.R. 12319), as amended by Executive Order 11375 dated October 13, 1967 (32 F.R. 14303), and any Executive Order amending or superseding such orders.

(r) "Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(s) "Prime contractor" means any person holding a contract, and for the purposes of Subpart B (General Enforcement, Compliance Review, and Complaint Procedure) of the "rules and regulations", any person who has held a contract subject to the order.

(t) "Recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(u) "Rules, regulations, and relevant orders" of the Secretary of Labor used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

(v) "Secretary" means the Secretary of Housing and Urban Development.

(w) "Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

(x) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

(y) "Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B (General Enforcement; Compliance Review, and Complaint Procedure) of the "rules and regulations," any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(z) "United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

§ 130.10 Responsibilities.

(a) *General.* The Department of Housing and Urban Development is responsible for: (1) Implementing the requirements of the order, the "rules and regulations," OFCC directives and all other rules, regulations, and orders issued pursuant thereto, and (2) obtaining the compliance of all contractors for which the Department is the Compliance Agency.

(b) *Contract Compliance Officer (CCO).* The Assistant Secretary for Equal Opportunity has been designated the Contract Compliance Officer (CCO) for the Department by the Secretary (35

F.R. 7138, May 6, 1970), and is responsible for developing and administering the Department's program under the order.

(c) *General Deputy Contract Compliance Officer (GDCCO).* The Deputy Assistant Secretary for Equal Opportunity has been designated the General Deputy Contract Compliance Officer (GDCCO) for the Department by the Secretary (35 F.R. 7138, May 6, 1970), to assist the Contract Compliance Officer in the performance of his duties. He is authorized to exercise the authority delegated to the Contract Compliance Officer.

(d) *Deputy Contract Compliance Officer (DCCO).* Each Assistant Regional Administrator for Equal Opportunity has been designated by the Contract Compliance Officer as Deputy Contract Compliance Officer (DCCO) for the Region in which he serves. Deputy Contract Compliance Officers are responsible for field administration of programs of contract compliance in conformity with directives and guidelines promulgated by the Contract Compliance Officer.

(e) *Heads of Program Areas.* Assistant Secretaries of the Department who are authorized to extend Federal financial assistance which involves construction work shall be responsible for effectuating the Order, "rules and regulations," OFCC directives, this Part 130, directives of the Department and all other rules, regulations, and orders issued pursuant thereto as they relate to construction contracts financially assisted by the Department.

§ 130.15 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or repesentative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 25, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* Except as otherwise provided, the following language shall be included as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That

if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Department or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the Department may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000 and such other contracts as the Director may designate.

(e) *Incorporation by operation of the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

§ 130.20 Exemptions.

(a) *General*—(1) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. The Department, applicants, contractors, and subcontractors shall not procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open-end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by § 130.50 and maintaining a written affirmative action compliance program prescribed in §§ 130.30 and 130.35.

(b) *Specific contracts and facilities not connected with contracts.* The equal opportunity clause will not be required to be included in any contract or subcontract exempted by the Director under the provisions of 41 CFR 60–1.5(b) (1) or (2) provided such exemption has not been withdrawn under the provisions of 41 CFR 60–1.5(d).

(c) *National security.* Any requirement set forth in the regulations in this part shall not apply to any contract or subcontract whenever the Secretary determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the Secretary will notify the Director in writing within 30 days.

§ 130.25 Award of contracts.

(a) All Contracting Officers and all officers who approve applications for Federal financial assistance involving a construction contract, shall prior to approval follow either of the procedures in subparagraphs (1) or (2) of this paragraph:

(1) Notify the Contract Compliance Officer or appropriate Deputy as soon as practicable of the impending award of each nonexempt construction contract in excess of $100,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract subject to the equal opportunity clause, and

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Consult a list (supplied by the Contract Compliance Officer) of contractors who have previously been found to be in noncompliance with equal opportunity requirements. In the event of an impending award to any contractor on such list, the Contract Compliance Officer or appropriate Deputy shall be advised and the procedures of paragraph (b), (c), and (d) of this section shall be followed.

(b) The Contract Compliance Officer or appropriate Deputy shall review the available information relative to the prospective prime contractor's equal opportunity compliance status and notify the Contracting Officer or Approving Officer of any deficiencies found to exist. A copy of such report shall be forwarded to the Director.

(c) Contracting Officers or Approving Officers shall: (1) Notify the bidder, offeror, or applicant of any deficiencies found to exists by the Contract Compliance Officer or appropriate Deputy, and (2) direct any bidder, offeror, or applicant so notified to negotiate with the Contract Compliance Officer and to take such actions as the Contract Compliance Officer may require.

(d) The award of any such contract shall be conditioned upon the Contract Compliance Officer's notification to the Contracting Officer or Approving Officer that the bidder, offeror, or applicant has taken action or has agreed to take action satisfactory to the Contract Compliance Officer, appropriate Deputy, or the head of the agency as provided in § 130.55(a). Any such agreement to take action shall be stated in the contract, if the Contract Compliance Officer so requires.

(e) In the case of nonconstruction contracts, all Contracting Officers shall:

(1) Notify the Contract Compliance Officer as soon as practicable of the impending award of each nonexempt, nonconstruction Government contract in excess of $50,000, the name and address of

the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract or subcontract subject to the equal opportunity clause;

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements; and

(iii) Developed and have on file at each establishment affirmative action programs pursuant to Part 60–2 of the "rules and regulations."

(2) The Contract Compliance Officer shall notify the Compliance Agency (designated pursuant to the Director's Order No. 1 and 41 CFR 60–1.3(d)) of the impending award of each contract covered by subparagraph (1) of this paragraph. Based upon the information furnished by the Compliance Agency, the Contract Compliance Officer shall advise the Contracting Officer to take such action with respect to the impending award as may be appropriate pursuant to the rules, regulations, and relevant orders of the Secretary of Labor and this Part 130.

(f) The invitation for bids for each formally advertised nonconstruction contract, shall include a notice, and Department officials shall state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of $1 million, the prospective contractor and his known first-tier subcontractors with subcontracts of $1 million or more will be subject to a compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first-tier $1 million subcontractors has been conducted by the Compliance Agency within 12 months prior to the award. If an agency other than the Department is the Compliance Agency, the Department will notify the Compliance Agency and request appropriate action and findings in accordance with this paragraph. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to Part 60–2 of the "rules and regulations."

(g) A preaward compliance review may be conducted prior to award of contracts in any case where the CCO has reasonable grounds, based on a complaint, the Department's own investigation, or otherwise, to believe that the contractor or subcontractor is unable or unwilling to comply with the requirements of the equal opportunity clause. (Such reviews are in addition to those required pursuant to paragraph (f) of this section.)

§ 130.30 Affirmative action compliance programs—nonconstruction contracts.

Order No. 4 (41 CFR Part 60–2), issued by the Secretary of Labor, sets forth requirements for the development of affirmative action compliance programs for nonconstruction contractors.

§ 130.35 Affirmative action compliance programs—construction contracts.

(a) *Requirements of programs.* The Department or the applicant shall require each Federal or federally assisted construction prime contractor on projects costing $1 million or more, regardless of the number of employees, and each Federal or federally assisted construction prime contractor and subcontractor shall require each subcontractor on projects costing $1 million or more with a subcontract of $100,000 or more, regardless of the number of employees, to develop a written affirmative action compliance program.

(b) *Purposes.* The purposes of the written affirmative action program are:

(1) To identify areas of employment, employment policies and practices which require action by the contractor or subcontractor to assure equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, or national origin;

(2) To analyze these areas, policies, and practices to determine what actions by the contractor or subcontractor will be most effective in assuring equal opportunity; and

(3) To establish a plan to achieve employment opportunity through those actions identified as potentially most effective.

§ 130.40 Prebid requirements and conferences.

(a) In any area or for any class of contracts designated by the Director, or by the CCO, no bid invitations will be issued for any Federal or federally assisted construction contract unless such bid invitation contains definite minimum standards for affirmative action and a statement that contractors and subcontractors must meet such minimum standards to be eligible for award.

(b) Whenever the submission of a written affirmative action program is required before the award of a contract, definite minimum standards for such program shall be incorporated in the bid invitations or requests for proposal issued in connection with such contracts.

(c) When the Director or CCO so requires, a prebid conference will be held in which the minimum standards for affirmative action will be explained to those in attendance. All known prospective bidders will be notified of the date, time, and place of the prebid conference.

(d) Bids which fail to meet the standards prescribed shall be deemed nonresponsive and will not be considered for award.

§ 130.45 Participation in areawide equal employment opportunity programs.

Any contractor who is a participant in, or is a member of an organization or association which participates in, an areawide equal employment opportunity program which is approved by the Department and the Office of Federal Contract Compliance for the purpose of effectuating the goals of Executive Order 11246, may be deemed to be in compliance with the order by virtue of such participation and shall be exempt from the requirement of developing and maintaining a written affirmative action program, unless required to do so under the areawide equal employment opportunity program.

§ 130.50 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor shall file, and each prime contractor and subcontractor shall cause its subcontractors to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of the "rules and regulations" in accordance with 41 CFR 60–1.5; (ii) has 100 or more employees; (iii) is a prime contractor or first-tier subcontractor; and (iv) has a nonexempt contract, subcontract or purchase order, serves as a depository of Government funds, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided,* That any subcontractor below the first tier which performs construction work shall be required to file such a report if it meets requirements of subdivisions (i), (ii), and (iv) of this subparagraph.

(2) Each person required by subparagraph (1) of this paragraph to submit reports shall file such a report with the Department within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with subparagraph (1) of this paragraph, or at such other intervals as the CCO or the Director may require. The Department, with the approval of the Director, may extend the time for filing any report.

(3) The Director, the CCO, or the applicant, on his own motion, may require a prime contractor or subcontractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director, CCO or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is grounds for the imposition by the Department, the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the "rules and regulations." Any such

failure shall be reported in writing to the Director by the CCO as soon as practicable after it occurs.

(b) *Requirements for bidders or prospective contractors*—(1) *Previous reports.* Each bidder or prospective prime contractor and proposed subcontractor, where appropriate, shall state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60–2; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause and (iii) if so, whether it has filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the CCO, the Deputy CCO, or the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the Department, the applicant, or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order and the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§ 130.55 Compliance reviews.

(a) *General.* The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made. Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the Contract Compliance Officer, the appropriate Deputy, or the Secretary of such commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(b) *Regular compliance reviews.* Each Deputy Contract Compliance Officer shall institute a program of regular compliance reviews of those contractors and subcontractors for which he is assigned responsibility.

(c) *Special compliance review.* The special compliance review of bidders, applicants, offerors, contractors, or subcontractors will be conducted at the request of the CCO or the Director, OFCC to determine compliance or ability to comply with the order, the "rules and regulations," these rules and regulations and directives issued pursuant thereto.

(d) *Reports*—(1) *Special compliance review reports.* A special compliance review report shall be provided to the CCO or the Director, OFCC, as directed.

(2) *Regular compliance review reports.* A report of each compliance review shall be forwarded to the CCO within 30 days after the regular review is conducted unless otherwise provided.

(3) *Preaward compliance review report.* A written report of every preaward compliance review required by the "rules and regulations," or otherwise required by the Director including findings, will be forwarded to the Director by the CCO within 10 days after the award for a postaward review.

(4) *Additional reports.* A written report of every other compliance review or any other matter processed by the Department involving an apparent violation of the equal opportunity clause shall be submitted to the Director. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

§ 130.60 Complaint procedure.

(a) *Who may file complaints.* Any employee of any contractor or applicant for employment with such contractor may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination in violation of the equal opportunity clause. Such complaint is to be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the CCO or the Director upon good cause shown.

(b) *Where to file.* Complaints may be filed with the Director of OFCC or at any HUD Regional or Area Office, FHA Insuring Office or with the CCO. Any HUD employee receiving a complaint shall forward the complaint directly to the CCO or his designee. The CCO shall transmit a copy of the complaint to the Director within 10 days after the receipt thereof.

(c) *Contents of complaint.* (1) The complaint should include the name, address, and telephone number of the complainant, the name and address of the prime contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his authorized representative.

(2) Where a complaint contains incomplete information, the CCO shall seek promptly the needed information from the complainant. In the event such information is not furnished to the CCO within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* For each complaint filed against a prime contractor or subcontractor for which HUD is the Compliance Agency, the CCO shall institute a prompt investigation and shall be responsible for developing a complete case record. A complete case record consists of the name and address of each person interviewed, and a summary of his statement, copies or summaries of pertinent documents, and a narrative summary of the evidence disclosed in the investigation as it relates to each violation revealed. When a complaint is filed against a prime contractor or subcontractor for which the Department is not the compliance agency, the CCO shall transmit the complaint to the Director for disposition.

(e) *Resolution of complaints.* (1) If the complaint investigation by the CCO shows no violation of the equal opportunity clause, he shall so inform the Director. The Director may request further investigation by the CCO.

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director, and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the CCO with the approval of the Director shall afford the contractor an opportunity for a hearing. If the final decision reached in accordance with the provisions of § 60–1.26 of the "rules and regulations" is that a violation of the equal opportunity clause has taken place, the CCO with the approval of the Director, may cause the cancellation, termination, or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the order.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the CCO or the Director and

believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the CCO or the Director.

(5) For reasonable cause shown, the CCO may reconsider or cause to be reconsidered any matter on his own motion or pursuant to a request.

(f) *Report to the Director.* Within 60 days from receipt of a complaint or within such additional time as may be allowed by the Director for good cause shown, the CCO shall process a complaint and submit to the Director the case record and summary report containing the following information:

(1) Name and address of the complainant.

(2) Brief summary of findings, including a statement as to the CCO's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause.

(3) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

§ 130.65 Hearings and sanctions.

(a) The Secretary with the approval of the Director may convene formal or informal hearings as he may deem appropriate for inquiring into the status of compliance by any prime contractor or subcontractor with the terms of the equal opportunity clause.

(b) The Secretary may propose or apply sanctions in the event of noncompliance by a contractor or subcontractor with the requirements of the equal opportunity clause, subject to the limitations of the "rules and regulations," particularly § 60–1.27.

(c) The conduct of hearings and the proposal and application of sanctions shall be in accordance with the requirements of the order and of the "rules and regulations."

§ 130.70 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by the CCO or the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

§ 130.75 Segregated facilities certificate.

Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, the Department or the applicant shall require the prospective prime contractor, and each prime contractor and subcontractor shall require each subcontractor, to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt subcontract.

§ 130.80 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 130.85 Access to record of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the order, and all rules and regulations promulgated pursuant thereto, by the Department or the Director for purposes of investigation to ascertain compliance with the equal opportunity clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the order and the administration of the Civil Rights Act of 1964, and in furtherance of the purposes of the order and that Act.

§ 130.90 Notices to be posted.

Contractors and subcontractors required to do so by paragraphs (1) and (3) of the equal opportunity clause shall post notices to be provided by the CCO. Such notices shall be in compliance with the requirements of § 60–1.42 of the "rules and regulations."

§ 130.95 Program directives and instructions.

Appropriate program officials may issue such directives, procedures, and instructions as they consider necessary to achieve equal employment opportunity in programs administered by them, provided such issuances are not inconsistent with the provisions of the order, the rules, regulations, and directives of the Secretary of Labor or the Director, and these regulations. A copy of such directives, procedures, and instructions shall be submitted to the CCO for approval prior to issuance.

§ 130.100 Effective date.

The regulations contained in this part shall become effective December 31, 1971, for all contracts, solicitations, invitations for bids, or requests for proposals which shall be sent by the Department or an applicant on or after said effective date and for all negotiated contracts which have not been executed as of said effective date.

Chapter II—Office of Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner [Federal Housing Administration]

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200.52b Director of the Mortgage Insurance Programs Support Division and Deputy.
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200.54 Director of the Administrative Support Division and Deputy.
200.55 Assistant Commissioner Property Improvement and Deputy.
200.56 Assistant Commissioner Unsubsidized Insured Housing Programs and Deputy.
200.56a Director Single Family and Land Development Division and Deputy.
200.58 Director Multifamily Division and Deputy.
200.58a Chief of the Rental Housing Branch.
200.58b Chief of the Cooperative and Condominium Branch.
200.58c Chief of the Nursing Homes and Related Facilities Branch.
200.58d Chief of the Group Practices and Nonprofit Hospitals Branch.
200.59 Assistant Commissioner Subsidized Housing Programs and Deputy.
200.59a Director Publicly Financed Housing Division and Deputy.
200.59b Chief of the Low Rent Housing Branch.
200.59c Chief of the College Housing Assistance Branch.
200.61 Director Subsidized Mortgage Insurance Division and Deputy.
200.61a [Reserved]
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200.61d Chief of the Homeownership Assistance Branch.
200.61e Chief of the Elderly Housing Assistance Branch.
200.61f Chief Multifamily Housing Assistance Branch.
200.62 Assistant Commissioner Technical and Credit Standards and Deputy.
200.63 Director of the Architecture and Engineering Division and Deputy.
200.64 Director Appraisal and Mortgage Risk Division and Deputy.
200.65 Assistant Commissioner Programs and Deputy.
200.65a [Reserved]
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200.66 Director of the Research and Statistics Division and Deputy.
200.67 Director of the Program Division and Deputy.
200.68 Assistant Commissioner Administration and Deputy.
200.70 Director of the Budget Division and Deputy.
200.71 Director Participation and Compliance Review Division and Deputy; Previous Participation Review Officer.
200.72 Director of the Management and Operations Assistance Division and Deputy.
200.73 Assistant Commissioner for Rehabilitation and Deputy.
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200.106 Assistant Commissioner for Field Operations and Deputy; HUD Regional Administrators and Assistant Regional Administrators for FHA; Directors, Deputy Directors, Assistant Directors, Administrative Officers, Chief Clerks, and Service Office Supervisors in FHA Field Offices; and Assistant Comissioner for Administration and Deputy.
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200.110 Chief, Valuation Section, and Commitment Appraiser.
200.111 Chief, Mortgage Credit Section, and Commitment Mortgage Credit Examiner.
200.112 Chief, Finance and Mortgage Credit Section.
200.113 Assistant Director for Technical Services.
200.114 Assistant Director for Single Family Mortgage Insurance and Deputy.
200.115 Program Manager and Multifamily Housing Representative.
200.116 Director, Production Division, and Deputy.
200.117 Director, Housing Services and Property Management Division, and Chief, Property Operations Branch.
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AUTHORITY: The provisions of this Part 200 issued under sec. 2, 48 Stat. 1246, as amended, sec. 211, 52 Stat. 23, as amended, sec. 607, 55 Stat. 61, as amended, sec. 712, 63 Stat. 1281, as amended, sec. 907, 65 Stat. 301, as amended, sec. 807, 69 Stat. 651, as amended; 12 U.S.C. 1703, 1715b, 1742, 1747k, 1748f, 1750f.

Subpart A—Origin and Establishment

§ 200.1 Creation.

The Federal Housing Administration (frequently referred to herein as the FHA) was originally created by the National Housing Act, approved June 27, 1934 (48 Stat. 1246; 12 U.S.C. 1702). On November 9, 1965, by operation of the Department of Housing and Urban Development Act, approved September 9, 1965 (79 Stat. 667), the FHA was transferred to the Department of Housing and Urban Development.

§ 200.2 Status.

The Federal Housing Administration is an organizational unit within the Department of Housing and Urban Development.

§ 200.3 Purpose.

The Federal Housing Administration was established to encourage improvement in housing standards and conditions, to provide an adequate home financing system by insurance of housing mortgages and credit, and to exert a stabilizing influence on the mortgage market.

§ 200.4 Meaning of term "Commissioner".

Effective January 18, 1966, the term "Commissioner," as used in this chapter, shall have the following meaning:

(a) Where the term appears in connection with the conveyance or assignment of real or personal property, it shall be deemed to refer to the Secretary of Housing and Urban Development.

(b) Where the term appears in connection with instances other than set forth in paragraph (a) of this section,

it shall be deemed to refer to the Federal Housing Commissioner acting on behalf of the Secretary of Housing and Urban Development.

Subpart B—Functions and Programs

In General

§ 200.5 Scope and nature of programs.

The Federal Housing Administration does not make loans or build housing but operates insurance programs under the provisions of the National Housing Act. The FHA provides insurance for private lenders against loss on mortgages financing homes, multifamily projects, land development projects, and group practice facilities projects and against loss on loans for property improvements. It also provides insurance of yields on investments in rental housing projects. All mortgage and loan transactions must be acceptable to the Commissioner. The various insurance programs are outlined in §§ 200.10 through 200.39, and more particularly described in other parts of this chapter.

§ 200.6 Application for lender approval.

An application for approval, as a mortgagee, as a loan correspondent or as a Title I lending institution is submitted on an appropriate form prescribed by the Commissioner. These forms may be obtained from any regional, area, or insuring office or from the Headquarters Office in Washington, D.C. When fully executed the form is submitted to the office having jurisdiction for transmittal to the Headquarters Office, Washington, D.C.

§ 200.7 Forms for mortgage and loan insurance.

Forms and instructions for obtaining assistance under each of the various FHA mortgage and loan insurance programs may be obtained from any regional, area, or insuring office. When fully executed, forms are submitted to the area or insuring office having jurisdiction of the area where the property is located and for which insurance assistance is requested.

Home Mortgage Insurance

§ 200.10 One- to four-family homes.

(a) The FHA insures mortgages on one- to four-family dwellings. The maximum mortgage cannot exceed the lesser of a dollar amount (which varies depending upon whether the residence is one-, two-, three- or four-family) and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) The basic home mortgage insurance program is authorized under Title II, section 203(b) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.11 Disaster damage to homes.

(a) The FHA insures mortgages given to finance the replacement of homes destroyed or extensively damaged by major disasters. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) This program is authorized under Title II, section 203(h) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.12 Suburban and farm homes.

(a) The FHA insures mortgages on single-family owner-occupied homes located in sparsely populated nonurban areas and farm areas. The land on which the house is located must be adjacent to a public highway. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property.

(b) This program is authorized under Title II, section 203(i) of the National Housing Act and governed by regulations contained in Part 203 of this chapter.

§ 200.13 Homes for servicemen.

(a) The FHA insures mortgages on single-family dwellings owned and occupied by servicemen on active duty with the Armed Forces or the Coast Guard. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense (or the Secretary of Transportation for Coast Guard personnel) is required to the effect that the serviceman requires housing and that he is and has been for more than 2 years on active military duty.

(b) This program is authorized under Title II, section 222 of the National Housing Act and governed by regulations contained in Part 222 of this chapter.

§ 200.14 Homes for veterans.

(a) The FHA insures mortgages on single-family dwellings owned and occupied by veterans. To qualify as a veteran, the mortgagor must have served 90 days or more on active duty in the armed forces of the United States and have been discharged or released therefrom under conditions other than dishonorable. Extra hazardous duty for a period of less than 90 days will also qualify a mortgagor as a veteran. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. The program offers lower downpayment mortgage financing for the veteran than is available under the regular home mortgage insurance program described in § 200.10.

(b) This program is authorized under title II, sections 203 and 220 of the National Housing Act and title VIII, section 809 of such Act. The applicable regulations are contained in Parts 203, 220, and 226 of this chapter.

§ 200.15 Housing for civilian employees of the Armed Services, NASA, and AEC.

(a) The FHA insures mortgages covering purchases of one- to four-family homes by civilian employees of an Armed Services or National Aeronautics and Space Administration research and development installation and by civilian and military personnel employed or assigned to duty at an Atomic Energy Commission research and development installation. The maximum mortgage cannot exceed the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the property. Certification by the Secretary of Defense, the Administrator of the NASA or the Chairman of the AEC, as appropriate, is required regarding the status of the mortgagor as an employee at the installation (civilian employee or person on military duty), the mortgagor's need for housing, the general need for housing accommodations at the installation, and the permanency of the personnel assigned to the installation. The Secretary of Defense, the Administrator of the NASA or the Chairman of the AEC, as appropriate, may be required to guarantee the insured mortgages, if the Commissioner determines that the housing is not an acceptable risk.

(b) This program is authorized by section 809 of the National Housing Act and governed by the regulations contained in Part 226 of this chapter.

§ 200.19 Other home mortgage assistance.

The FHA offers other types of home mortgage insurance assistance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.25, 200.26, 200.30, and 200.32 through 200.35 of this subpart.

Project Mortgage Insurance

§ 200.20 Rental projects.

(a) The FHA insures mortgages, including advances made during construction, on rental projects of eight or more units developed either by a private or public mortgagor. The statute prescribes a maximum mortgage determined by a dollar amount, an amount computed under a formula based on the ratio the loan bears to the appraised value of the property, and a varying amount depending upon the number of bedrooms in each dwelling unit.

(b) The basic rental housing project mortgage insurance program is authorized under section 207 of the National Housing Act. The regulations governing this activity are contained in Part 207 of this chapter.

§ 200.21 Housing for the elderly.

(a) The FHA insures mortgages, including advances made during construction, on housing projects for the elderly developed by a private, profit-making mortgagor or a nonprofit organization, a

Federal or State instrumentality, a municipal corporation, or a nonprofit development or housing corporation. Preference for occupancy in such projects is required for elderly persons 62 years of age or over and for the physically handicapped. The statute prescribes a maximum mortgage determined by a dollar amount, an amount computed under a formula based on a ratio the loan bears to the replacement cost of the property, and a varying amount depending upon the number of bedrooms in each dwelling unit.

(b) This program is authorized under section 231 of the National Housing Act and governed by the regulations contained in Part 231 of this chapter.

§ 200.22 Nursing homes.

(a) The FHA insures mortgages, including advances made during construction, on nursing homes either of the proprietary or nonprofit type. The statute prescribes a maximum mortgage determined by a dollar amount and an amount computed under a formula based on a ratio the loan bears to the estimated value of the property.

(b) This program is authorized under section 232 of the National Housing Act and governed by the regulations contained in Part 232 of this chapter.

§ 200.24 Investment insurance.

(a) In order to encourage investment in debt-free rental housing for families of moderate income the FHA insures the minimum amortization charge of 2 percent of the established investment (including all approved costs prior to initial occupancy) and a fixed annual return on the outstanding investment in an eligible project.

(b) This program is authorized under title VII of the National Housing Act and governed by Part 238 of this chapter.

§ 200.25 Armed services housing—impacted areas.

(a) The FHA insures mortgages on rental and sales housing projects developed for military personnel and essential civilian employees of the armed services or Coast Guard, employees of contractors for the armed services or Coast Guard, and essential personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration or the Atomic Energy Commission or employees of a contractor of NASA or AEC who are employed at a research or development installation. The statute prescribes a maximum mortgage determined by a dollar amount and an amount computed under formulas, which differ for the rental and sales projects, based on the ratio the loan bears to the appraised value of the property. In rental projects, there is an additional limitation based on the number of bedrooms in each dwelling unit. Provision is included for the insurance of the mortgages financing the purchase of the individual dwelling units in a sales project.

(b) This program is authorized under title VIII, section 810 of the National Housing Act and governed by regulations contained in Part 227 of this chapter.

§ 200.26 Condominium ownership.

(a) The FHA insures mortgages, including construction advances, on multifamily housing projects developed with the intention of converting, upon construction, to a plan of apartment ownership under which the family units in the project are sold to individual owners. In addition, insurance is provided for mortgages financing the purchase of the individually owned apartment units.

(b) The maximum mortgage is computed as follows:

(1) Multifamily housing project mortgages are limited to the lesser of a dollar amount, an amount computed under a statutory formula based on the ratio the loan bears to the replacement cost of the project, or an amount based on the number of bedrooms in each dwelling unit.

(2) Individual mortgages on the apartment units are limited to the lesser of a dollar amount and an amount computed under a statutory formula based on the ratio the loan bears to the appraised value of the apartment unit.

(c) This program is authorized under section 234 of the National Housing Act. The applicable regulations are contained in Part 234 of this chapter.

§ 200.27 Land development.

(a) The FHA insures mortgages for land development in connection with subdivisions and new communities. This authorization is designed to assist private enterprise by enabling private developers to purchase raw land and develop it to provide a steady supply of improved building sites in an orderly and economical manner. The type of improvements to be installed by the developer and which may be financed with the mortgage proceeds includes installations for water lines, water supply, sewage disposal; for complete water or sewerage systems; roads, streets, curbs, gutters, sidewalks, and storm drains. The total outstanding principal of mortgages, involving a single land development undertaking, shall at no time exceed a dollar amount prescribed by statute. The statute further prescribes a maximum mortgage determined by the ratio the loan bears either to the value of the property after completion of the land development or the value before proposed development plus the cost of such development. The mortgage has a fixed maturity which may be extended where the financing of a water or sewerage system or of a new community is involved.

(b) This program is authorized under title X of the National Housing Act and governed by regulations contained in Part 205 of this chapter.

§ 200.28 Group practice facilities.

(a) The FHA insures mortgages to make credit available on reasonable terms to finance construction and equipment of medical, dental and optometric group practice facilities. The sponsoring group or organization may be either profit motivated or nonprofit, but the mortgagor entity must be nonprofit. It may operate the proposed facility or lease it to a professional group, either profit or nonprofit. The professional group, of not less than five physicians or not less than three dentists and optometrists, all on a full-time schedule, shall have the intention and capability of providing preventive and diagnostic treatment services of a comprehensive nature under a coordinated program with payment for such services on either a prepayment or fee-for-service basis. The 25-year mortgage shall not exceed the lesser of a dollar amount or an amount computed under a statutory formula based on a ratio the loan bears to the estimated value of the property, including equipment.

(b) The program is authorized under title XI of the National Housing Act and governed by regulations contained in Part 244 of this chapter.

§ 200.29 Other project mortgage assistance.

The FHA offers other types of project mortgage insurance in connection with programs under other titles of the National Housing Act as indicated by §§ 200.30 through 200.35 of this subpart.

COOPERATIVE HOUSING INSURANCE

§ 200.30 Cooperative projects.

(a) The FHA insures mortgages, including construction advances, on cooperative housing projects. The mortgagor may be a nonprofit cooperative ownership housing corporation or trust, the permanent occupancy of the dwellings being restricted to members of the corporation or beneficiaries of the trust (management type project), or a nonprofit corporation or trust organized for the purpose of building homes for members (sales type project) or a corporate investor that certifies to the FHA its intention of selling the project to a cooperative group within 2 years after completion (investor-sponsor project). In addition, the FHA insures supplementary cooperative loans to a nonprofit cooperative project for improvements or repairs to property which is already covered by an FHA-insured project mortgage or for community facilities necessary to serve the occupants of such projects or to finance cooperative purchases and resales of membership.

(b) The maximum mortgage on project type housing cannot exceed the lesser of a dollar amount or an amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property. In the case of sales type projects, provision is made for the release of the individual properties from the blanket project mortgage, and the insurance of the individual mortgage covering the individual dwelling with the principal amount limited to the unpaid balance of the blanket mortgage allocable to the individual property as of the date of the release. In the case of a supplementary cooperative loan, the loan is basically limited to an amount which when added to the outstanding mortgage indebtedness creates a total indebtedness

which does not exceed the original principal obligation of the mortgage. The total indebtedness created by the supplementary cooperative loan may exceed the original principal obligation where improvements or additional community facilities are involved, provided such total does not exceed the mortgage amount which would be eligible for insurance if the original mortgage were to be replaced with a new insured mortgage refinancing the existing indebtedness and financing the improvements.

(c) This program is authorized under Title II, section 213 of the National Housing Act and governed by regulations contained in Part 213 of this chapter.

TRAILER COURTS AND PARKS INSURANCE

§ 200.31 Sites and facilities for mobile homes.

(a) The FHA insures mortgages on trailer courts and parks. The mortgage transaction must be acceptable to the Commissioner and the maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the estimated value of the property after the improvements are completed. The insurance applies to mortgages on sites and facilities but not on the trailers themselves. The court or park must have at least fifty spaces on one site designed for rental use for trailers or mobile homes and must meet minimum requirements designed to improve the living conditions of the occupants.

(b) This program is authorized under Title II, section 207 of the National Housing Act and governed by regulations contained in Part 207 of this chapter.

URBAN RENEWAL INSURANCE

§ 200.32 Residential rehabilitation.

(a) In urban renewal areas, the FHA insures mortgages on dwellings designed principally for residential use by not more than 11 families and on multifamily rental projects. The mortgages may be for financing the rehabilitation of existing salvable housing (including the refinancing of existing indebtedness) or for the replacement of slums with new housing. Insurance on multifamily project mortgages may include coverage of construction advances.

(b) The determination of maximum mortgage is governed by the following:

(1) On a 1- to 11-family dwelling the mortgage is limited to the lesser of a dollar limitation, governed by the number of residences in the dwelling, or a ratio of loan to the estimated replacement cost established under a statutory formula. Where rehabilitation is involved, an additional adjustment in the maximum mortgage is made on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. Where refinancing is involved, a further adjustment is made on the basis of the amount required to pay off the outstanding indebtedness.

(2) On a multifamily project, the mortgage is limited to the lesser of:

(i) A dollar amount.

(ii) An amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property with an additional adjustment made where the project involves rehabilitation and/or refinancing. Where rehabilitation is involved, the mortgage is adjusted on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. Where refinancing is involved, a further adjustment is made on the basis of the amount required to pay off the outstanding indebtedness.

(iii) An amount based on the number of bedrooms in each dwelling unit.

(c) This program is authorized under Title II, section 220 of the National Housing Act and governed by regulations contained in Part 220 of this chapter.

LOW AND MODERATE INCOME HOUSING

§ 200.33 Low cost homes and moderate income projects.

(a) The FHA insures mortgages on low cost homes for low and moderate income families with special terms available to families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster. Also, mortgages are insured by the FHA, including construction advances, on projects for moderate income families involving profit, nonprofit, public, limited distribution and cooperative mortgagors. Projects must be located in a community which the Secretary of Housing and Urban Development has approved and certified to the FHA as having a workable program designed to eliminate slums and prevent the spread of urban blight. Projects meeting special criteria may be insured at a below market interest rate. Eligibility for occupancy of a project financed with a below market interest rate mortgage is limited to families and elderly or handicapped individuals having an income below the income ceiling established by the Commissioner for the area in which the project is located.

(b) The maximum mortgage on a low cost home is limited to the lesser of the value of the property or a dollar amount which depends on whether a one-, two-, three- or four-family residence is involved. Where rehabilitation is involved, an additional adjustment in the maximum mortgage is made on the basis of the estimated cost of rehabilitation and the estimated value of the property prior to rehabilitation. The maximum mortgage on a multifamily project is limited to the lesser of:

(1) A dollar amount.

(2) An amount computed under a statutory formula based on a ratio the loan bears to the replacement cost of the property with an additional adjustment made where the project involves rehabilitation. In such instances, the mortgage is limited to the estimated cost of rehabilitation plus the estimated value of the property prior to rehabilitation.

(3) An amount based on the number of bedrooms in each dwelling unit.

(c) This program is authorized under title II, section 221 of the National Housing Act and governed by regulations contained in Part 221 of this chapter.

PUBLICLY CONSTRUCTED HOUSING INSURANCE

§ 200.34 Miscellaneous type mortgages.

The FHA insures mortgages financing purchases of certain types of permanent housing sold by Federal and State Governments, including the first resale. This program is authorized under Title II, section 223 of the National Housing Act and governed by regulations set out in connection with each of the applicable insurance programs.

EXPERIMENTAL HOUSING INSURANCE

§ 200.35 Experimental housing.

(a) The FHA insures mortgages on home and multifamily properties that incorporate new or untried construction concepts aimed at reducing housing costs, raising living standards, quality, livability or durability, or improving neighborhood design. The program contemplates the utilization and testing of advanced technology in housing design, materials, or products so as to contribute to the foregoing objectives. Mortgages or improvement loans that meet the eligibility requirements for insurance under any of the various FHA title II home or project mortgage programs may be eligible for insurance under the experimental housing section of the Act, provided the proposed construction meets applicable eligibility and property standards for the section of the Act under which it is to be processed. The maximum mortgage cannot exceed an amount computed under a statutory formula based on a ratio the loan bears to the estimated cost of replacing the property using comparable conventional design, materials and construction.

(b) This program is authorized under section 233 of the National Housing Act and governed by the regulations contained in Part 233 of this chapter.

PROPERTY IMPROVEMENT LOAN INSURANCE

§ 200.38 Title I improvement loans.

(a) The FHA insures financial institutions against loss on short term loans (5 to 7 years) made to finance alterations, repairs and improvements to existing structures and the building of small new structures for nonresidential use. To be eligible, the existing structures must have been completed at least 90 days prior to the loan application.

(b) This program is authorized under title I, section 2 of the National Housing Act and governed by regulations contained in Part 201 of this chapter.

§ 200.39 Other improvement loans.

(a) The FHA insures financial institutions against loss on long-term (20-year) loans made to finance the repair, restoration, rehabilitation, conversion, alteration, enlargement or remodeling of

individual homes or multifamily structures. To be eligible, the structures must be not less than 10 years old, except where the loan is to be used for major structural improvements or to correct defects not known at the time of completion of the structure or where the structure has been damaged by fire, flood, windstorm, or other casualty. The loans may also be used by a borrower to pay municipal assessments for public improvements adjacent to or in the vicinity of the borrower's property. The loan amount is basically limited to the estimated cost of the improvements or a dollar maximum amount per family unit. There is an additional limitation on the loan amount based on the lesser of the following:

(1) The amount of the improvement loan added to the outstanding indebtedness.

(2) The maximum insurable loan for refinancing the existing indebtedness and financing the cost of improvements.

(b) This program is authorized under title II, sections 203(k) and 220(h) of the National Housing Act and governed by regulations contained in Parts 203 and 220 of this chapter.

Subpart C—Organization and Management

§ 200.40 Commissioner.

The Federal Housing Administration is headed by a Commissioner who is an Assistant Secretary in the Department of Housing and Urban Development and who has been designated by the Secretary to serve as Assistant Secretary for Housing Production and Mortgage Credit. Each Assistant Secretary of the Department is appointed by the President by and with the advice and consent of the Senate.

§ 200.41 Administrative staff.

The principal administrative staff of the FHA includes the Deputy Assistant Secretary, the Executive Assistant Commissioner, and Assistant Commissioners, whose respective duties and areas of authority are indicated by their titles.

§ 200.42 Principal divisions.

Various Divisions have been established in the Headquarters office at Washington, D.C. which are altered as programs, authority and duties are changed from time to time.

§ 200.43 Regional Operations Commissioners.

The territory served by the Federal Housing Administration is divided into geographical regions comprised of a group of field insuring offices. Each region is headed by a Regional Operations Commissioner who is responsible to the Assistant Commissioner for Field Operations for the supervision, direction and coordination of all functions and responsibilities of the several officers within the jurisdiction established for the particular region.

§ 200.44 Field Office Directors.

Each of the insuring offices is managed and supervised by a Director who is the operating head thereof and the representative of the FHA in the territory served by the insuring office. The Director is also responsible for the administration of those of the various service offices or valuation stations established in his territory.

Subpart D—Delegations of Basic Authority and Functions

DELEGATIONS TO PARTICULAR POSITIONS

§ 200.50 Authority for delegations.

(a) Section 5(a) of the Department of Housing and Urban Development Act (79 Stat. 667) transferred to and vested in the Secretary all of the functions, powers, and duties of the Federal Housing Commissioner and the Federal Housing Administration which existed prior to November 9, 1965.

(b) Section 1 of title I of the National Housing Act, the authority under which the Commissioner and the Federal Housing Administration operated prior to November 9, 1965, provides in part as follows:

> ° ° ° In order to carry out the provisions of this title and titles II, III, VI, VII, VIII, IX, and X, the Commissioner may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, ° ° °. The Commissioner may delegate any of the functions and powers conferred upon him under this title and titles II, III, VI, VII, VIII, IX, and X to such officers, agents and employees as he may designate or appoint ° ° °.

(c) Section 7(d) of the Department of Housing and Urban Development Act (79 Stat. 667) provides in part as follows:

> The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties ° ° °.

(d) Interim Order II effective January 18, 1966 (31 F.R. 815) provides in part as follows: The offices or positions and organizational units in the Department shall include, in addition to those otherwise prescribed:

Office or position	*Respective organizational unit*
Federal Housing Commissioner.	Federal Housing Administration.

Each officer or employee appointed to, or designated to act in, the office or position listed immediately above, and each organizational unit so listed is hereby authorized to exercise the functions, powers, and duties vested in, or delegated or assigned to, the office or position or officer or employee or organizational unit having the same title immediately prior to the effective date of the Act, and to redelegate and authorize successive redelegations of such authority to the extent empowered under authority vested, delegated, or assigned immediately prior to the effective date of the Act. Authority delegated herein or redelegated hereunder shall be exercised in the name of the Secretary, except that authority delegated to the Federal Housing Commissioner or the Public Housing Commissioner may be exercised in the name of the Federal Housing Commissioner or the Federal Housing Administration, or the Public Housing Commissioner or the Public Housing Administration, respectively, and any actions taken under this delegation or a redelegation hereunder by or in the name of the Federal Housing Commissioner, Federal Housing Administration, the Public Housing Commissioner, or the Public Housing Administration, shall be deemed to be the action of the Secretary.

(e) Section 207 of the Appalachian Regional Development Act of 1965 authorizes the Secretary of Housing and Urban Development to make loans and grants, under such terms and conditions as he may prescribe, to nonprofit, limited dividend, or cooperative organizations, or to public bodies, for expenses of planning and of obtaining an insured mortgage for a housing construction or rehabilitation project, under section 221 or 236 of the National Housing Act, in any area of the Appalachian region determined by the Appalachian Regional Commission to have significant potential for future growth. The Assistant Secretary—Federal Housing Commissioner, is, by delegation of authority from the Secretary, authorized to execute the powers and functions vested in the Secretary by section 207 of the Appalachian Regional Development Act of 1965, as amended, and is further authorized to redelegate to one or more employees under his jurisdiction any of the authority delegated by the Secretary and to authorize successive delegation thereof.

§ 200.51 Acting Commissioner.

The Deputy Assistant Secretary, the Executive Assistant Commissioner, the Assistant Commissioner for Field Operations, the Assistant Commissioner for Programs, the Assistant Commissioner for Administration, and the Assistant Commissioner-Comptroller, in the order named, are designated by the Assistant Secretary-Commissioner to act in his place and stead in the event of his absence or inability to act, having the title of "Acting Commissioner" with all the powers, duties, and rights delegated to the Assistant Secretary-Commissioner by the Secretary of Housing and Urban Development.

§ 200.52 Deputy Assistant Secretary.

To the position of Deputy Assistant Secretary there is delegated the basic authority and functions and to act with and for the Assistant Secretary-Commissioner in the general administration of the Federal Housing Administration, in the determination of basic policy and in the general supervision, direction and coordination of all operations, activities

and functions of the Federal Housing Administration, with full authority at all times to make any decision which the Assistant Secretary-Commissioner is authorized to make and to issue any order which the Assistant Secretary-Commissioner is authorized to issue.

§ 200.52a Assistant Commissioner for Field Operations and Deputy.

To the position of Assistant Commissioner for Field Operations and under his general supervision to the position of Deputy Assistant Commissioner for Field Operations there is delegated the following basic authority and functions:

(a) To act with the Commissioner in the determination of basic policy and to be a member of the Executive Board.

(b) To direct all field operations for Housing Production and Mortgage Credit—FHA, including insurance of mortgages and production of low-rent public housing. Expedites housing production by developing production quotas and goals for all stages of processing, maintaining a record of accomplishments related to goals, and arranging for technical assistance to the local offices as needed.

(c) To be responsible for coordination and general supervision of the Regional Operations Commissioners.

(d) [Reserved]

(e) To take any action authorized to be taken by any office or division within his jurisdiction.

(f) To approve or disapprove the noncollection or refund of fees, to extend the period within which a mortgagee or lender is required to take action in order to prevent the expiration of a multifamily housing commitment or in order to reopen an expired multifamily housing commitment, and to approve or disapprove the retroactive reinstatement or reopening of an expired multifamily housing commitment.

§ 200.52b Director of the Mortgage Insurance Programs Support Division and Deputy.

To the position of Director of the Mortgage Insurance Programs Support Division and under his general supervision to the position of Deputy Director of the Mortgage Insurance Programs Support Division there is delegated the following basic authority and functions:

(a) To expedite housing production by developing production quotas and goals for the mortgage insurance programs through all stages of processing, by maintaining a continuing analysis of accomplishments related to goals, and by arranging for technical assistance to the local offices as needed.

§ 200.53 Director of the Publicly Financed Programs Support Division and Deputy.

To the position of Director of the Publicly Financed Programs Support Division and under his general direction to the Deputy Director of the Publicly Financed Programs Support Division there is delegated the following basic authority and functions:

(a) To expedite the production of housing by developing quotas and goals for the publicly-financed programs, including low-rent public housing, college housing, and Alaska housing, by maintaining a continuing analysis of accomplishments related to goals, and by arranging for specialized assistance to the local offices as needed.

§ 200.54 Director of the Administrative Support Division and Deputy.

To the position of Director of the Administrative Support Division and under his general supervision to the position of Deputy Director of the Administrative Support Division there is delegated the following basic authority and functions:

(a) To provide administrative support to all Housing Production and Mortgage Credit-FHA field office activities including personnel, budget, and other services.

§ 200.55 Assistant Commissioner Property Improvement and Deputy.

To the position of Assistant Commissioner for Property Improvement and under his general supervision to the position of Deputy Assistant Commissioner for Property Improvement there is delegated the following basic authority and functions:

(a) To act with the Commissioner in the determination of basic policy and to be a member of the Executive Board.

(b) To direct the activities of the Property Improvement Division.

(c) To develop and recommend policies and establish operating plans and procedures for the insurance of property improvement and mobile home loans under section 2 of title I of the National Housing Act, and for the liquidation of defaulted title I loans acquired in connection with the settlement of claims.

(d) To exercise the authority of the Commissioner under the regulations governing the insurance of loans under section 2 of Title I of the National Housing Act in any instance which is subject to the approval of the Commissioner.

(e) To issue or cancel contracts of insurance under Title I of the National Housing Act and transfer such contracts and the rights and benefits accruing thereunder between lending institutions.

(f) To reject or accept for insurance loans or advances of credit made under the provisions of section 2 of Title I of the National Housing Act that require the prior approval of the Federal Housing Commissioner.

(g) To institute precautionary measures with respect to any dealer or contractor operating under the provisions of section 2 of Title I of the National Housing Act.

(h) To direct and supervise surveys of Title I lending institutions to assure compliance with established policies and terms of insurance contracts.

(i) To maintain liaison with the Office of Investigation, HUD, concerning requests for and reports of investigation of alleged noncompliance or criminal activity in connection with section 2 of title I of the National Housing Act.

§ 200.56 Assistant Commissioner Unsubsidized Insured Housing Programs and Deputy.

To the position of Assistant Commissioner for Unsubsidized Insured Housing Programs and under his general supervision to the position of Deputy Assistant Commissioner for Unsubsidized Insured Housing Programs there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans and procedures for the insurance and servicing of home mortgages other than those insured under sections 221(h), 235, 237, and 243, and for the insurance and servicing of mortgages under section 240.

(b) To develop and recommend policies and establish operating plans and procedures for the insurance of multifamily housing mortgages under sections 207, 213, 231, 234, and 221(d)(4), nursing homes, intermediate care facilities, group practice facilities, and nonprofit hospitals.

(c) To approve or cancel the approval of financial institutions as approved mortgagees.

(d) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(e) To sign modification agreements prior to final endorsement for all projects under his jurisdiction.

(f) To develop and recommend policies and establish operating plans and procedures for the insurance and servicing of mortgages under the title X Land Development program.

§ 200.56a Director Single Family and Land Development Division and Deputy.

To the position of Director of the Single Family and Land Development Division and under his general supervision to the Deputy Director of the Single Family and Land Development Division, there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans and procedures for the insurance and servicing of home mortgages other than those insured under sections 221(h), 235, 237, and 243, and for the insurance and servicing of mortgages under section 240.

(b) To approve or cancel the approval of financial institutions as approved mortgagees.

(c) To supervise activities in connection with the Certified Agency Program and to designate, qualify and certify approved mortgagees as agents of the Federal Housing Administration to process mortgage insurance applications and issue commitments for insurance.

(d) To review and evaluate home mortgage insurance default experience, and to provide technical advice and guidance to approved mortgagees and field offices on insured home mortgage servicing problems.

(e) To review cases relating to expenditures to correct or compensate for structural defects in houses financed

with insured mortgages and to approve or reject, without referral to the Structural Defects Committee, those requests for financial assistance which he determines do not involve circumstances of an exceptionally difficult or questionable nature.

(f) To develop and recommend policies and establish operating plans and procedures for the insurance and servicing of mortgages under the title X Land Development program.

§ 200.58 Director Multifamily Division and Deputy

To the position of Director of the Multifamily Division and under his general supervision to the position of Deputy Director of the Multifamily Division there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans for the insurance of multifamily housing mortgages, exclusive of sections 221(d)(3) below market interest rate mortgages, 221(h), 235(j), 236, and 243, for insurance of nursing homes and intermediate care facilities; insurance of equity investments in multifamily housing; and insurance of mortgages for the construction and equipment of facilities for the group practice of medicine and nonprofit hospitals.

(b) To provide technical advice and guidance to consumer groups concerning the organization and financing of cooperative housing projects.

(c) To be responsible for the administration of FHA's responsibility with respect to the nonprofit hospital mortgage insurance program and for coordination with the Department of Health, Education, and Welfare on the program.

(d) To sign modification agreements prior to final endorsement for all projects under his jurisdiction.

§ 200.58a Chief of the Rental Housing Branch.

To the position of Chief of the Rental Housing Branch there is delegated the authority to develop and recommend policies and establish operating plans and procedures for the insurance of all multifamily housing project mortgages under sections 207 and 220, 221(d)(4), title VIII, and the insurance of equity investments in multifamily housing under title VII.

§ 200.58b Chief of the Cooperative and Condominium Branch.

To the position of Chief of the Cooperative and Condominium Branch there is delegated the following basic authority and functions:

(a) To develop and recommend policies, procedures and requirements for the insurance of cooperative housing mortgages and condominium mortgages.

(b) To provide technical advice and guidance to consumer groups concerning the organization and financing of cooperative housing projects.

§ 200.58c Chief of the Nursing Homes and Related Facilities Branch.

To the Chief of the Nursing Homes and Related Facilities Branch, there is delegated the following basic authority and functions:

(a) To develop and recommend policies, procedures, requirements, and methods of operation for the insurance of mortgages for nursing homes and intermediate care facilities.

(b) To be responsible for administration of the insurance programs for nursing homes and intermediate care facilities.

§ 200.58d Chief of the Group Practice and Nonprofit Hospitals Branch.

To the position of Chief of the Group Practices and Nonprofit Hospitals Branch there is delegated the following basic authority and functions:

(a) To develop and recommend policies, procedures, requirements, and methods of operation for the insurance of mortgages for the construction and equipment of facilities for the group practice of medicine and for nonprofit hospitals.

(b) To be responsible for the administration of FHA's responsibility with respect to the nonprofit hospital mortgage insurance program and for coordination with the Department of Health, Education, and Welfare on the program.

§ 200.59 Assistant Commissioner Subsidized Housing Programs and Deputy.

To the position of Assistant Commissioner for Subsidized Housing Programs and under his general supervision to the position of Deputy Assistant Commissioner for Subsidized Housing Programs there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To develop and recommend policies and establish operating plans and procedures for the administration of the low-rent public housing program from preapplication through the final acceptance of the completed construction, and for the closing of the construction contract; or, in the case of a project acquired or leased after completion, from preapplication through acceptance of the completed project and acquisition of title or leasehold interest.

(c) To develop and recommend policies and establish operating plans and procedures for the administration of the Alaska housing program, the college housing program, and the elderly housing program under section 202 from preapplication through construction completion, determination of the final loan and/or grant amount, and final closing and execution of the loan and/or grant documents.

(d) To control the utilization of funds and contract authority available for the production of housing under the low-rent public housing program, the College Housing Assistance Program and the Assistance Program for Alaska Housing; funds available for the direct loan program for housing for the elderly or handicapped; contract authority for the rent supplement, homeownership assistance, rental housing assistance and homeownership for middle-income families programs, and special assistance funds under the section 221 below market interest rate program to insure appropriate distribution and fund accountability and to make available on a continuing basis information on project and program status on all the abovementioned programs.

(e) To develop and recommend policies and establish operating plans and procedures for the insurance of multifamily housing mortgages under section 221(d)(3) at below market interest rates, exclusive of prescribing forms and procedures for cooperatives and condominiums; for insurance of mortgages under the rent supplement program and the rental housing assistance program; for insurance and servicing of mortgages under sections 235 and 237; for insurance of mortgages on cooperative and condominium housing under the section 243 homeownership for middle-income families program and for insurance and servicing of single-family mortgages under section 243; for noninsured assistance to state and local housing programs under the rent supplement program and the rental housing assistance program; and for technical and loan assistance to nonprofit sponsors of low and moderate income housing.

(f) To act for the Commissioner in approving applications for financial assistance under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended; in approving the waiver of interest on loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965; and in providing technical assistance to nonprofit sponsors authorized under the 1969 Amendments to the Appalachian Regional Development Act; and to recommend to the Loan Assistance Committee approval or disapproval of the waiver of repayment in whole or in part of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended.

§ 200.59a Director Publicly Financed Housing Division and Deputy.

To the position of Director of the Publicly Financed Housing Division and under his general supervision to the position of Deputy Director of the Publicly Financed Housing Division there is delegated the following basic authority and functions:

(a) To be responsible for administration of the low-rent public housing program from preapplication through the final acceptance of the completed construction, and for the closing of the construction contract; or, in the case of a project acquired or leased after completion, from preapplication through acceptance of the completed project and acquisition of title or leasehold interest.

(b) To develop and recommend policies and establish operating plans and procedures for the administration of the Alaska housing program and the college housing program from preapplication through construction completion, determination of the final loan and/or grant amount, and final closing and execution of the loan and/or grant documents.

(c) To control the utilization of funds and contract authority available for the production of housing under the low-rent public housing program, the College Housing Assistance Program, and the Assistance Program for Alaska Housing to insure appropriate distribution and fund accountability, and to make available on a continuing basis information on project and program status on the above-mentioned programs.

§ 200.59b Chief of the Low Rent Housing Branch.

To the position of Chief of the Low Rent Housing Branch, there is delegated the following basic authority and functions:

(a) To be responsible for administration of the low-rent public housing program from preapplication through the final acceptance of the completed construction, and for the closing of the construction contract; or, in the case of a project acquired or leased after completion, from preapplication through acceptance of the completed project and acquisition of title or leasehold interest.

(b) To control the contract authority and funds available for the production of housing under the low-rent public housing program, and to make available on a continuing basis information on project and program status.

§ 200.59c Chief of the College Housing Assistance Branch.

To the position of Chief of the College Housing Assistance Branch there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans and procedures for the administration of the College Housing Program from preapplication through construction completion, determination of the final loan and/or grant amount, and final closing and execution of the loan and/or grant documents.

(b) To maintain control of the funds available for the College Housing Program to insure appropriate distribution and fund accountability.

§ 200.61 Director Subsidized Mortgage Insurance Division and Deputy.

To the position of Director of the Subsidized Mortgage Insurance Division and under his general supervision to the position of Deputy Director of the Subsidized Mortgage Insurance Division there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans and procedures for the insurance of multifamily housing mortgages under section 221(d)(3) at below market interest rates, exclusive of prescribing forms and procedures for cooperatives and condominiums; for insurance of mortgages under the rent supplement program, the rental housing assistance program, and the credit assistance program; for insurance and servicing of mortgages under sections 235 and 237; for insurance of mortgages on cooperative and condominium housing under the section 243 homeownership for middle-income families program, and for insurance and servicing of single-family mortgages under section 243; for noninsured assistance to State and local housing programs under the rent supplement program and the rental housing assistance program; for technical and loan assistance to nonprofit sponsors of low and moderate income housing; and for control and utilization of contract authority under the rent supplement program, the homeownership assistance program, the rental housing assistance program, the homeownership for middle-income families program, and the allocation of special assistance funds under the section 221(d)(3) below market interest rate program.

(b) To act for the Commissioner in approving applications for financial assistance under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended; in approving the waiver of interest on loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965; and in providing technical assistance to nonprofit sponsors authorized under the 1969 Amendments to the Appalachian Regional Development Act; and to recommend approval or disapproval of the waiver of repayment in whole or in part of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended.

(c) To approve or direct the approval of loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959, including full authority to make contracts, sign and execute documents, and take any action incident thereto, and to be responsible for conversion of section 202 projects to insured private financing with interest assistance under section 236 of the National Housing Act.

§ 200.61a [Reserved]

§ 200.61b [Reserved]

§ 200.61c [Reserved]

§ 200.61d Chief of the Homeownership Assistance Branch.

To the position of Chief of the Homeownership Assistance Branch there is delegated authority to develop and recommend policies and establish operating plans and procedures for the insurance and servicing of mortgages under sections 235(i) and 237, and for administration of the contract authority under the homeownership assistance program.

§ 200.61e [Reserved]

§ 200.61f Chief Multifamily Housing Assistance Branch.

To the position of Chief of the Multifamily Housing Assistance Branch there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating procedures for the insurance of mortgages under section 221(d)(3), section 236, and the rent supplement program; and for noninsured assistance to State and local housing programs under the rent supplement program and the rental housing assistance program.

(b) To be responsible for utilization and control of the contract authority for the rent supplement program and the rental housing assistance program; for approval of loans under the direct loan program for housing the elderly or handicapped under section 202 of the Housing Act of 1959, and for conversion of section 202 projects to insured private financing with interest assistance under section 236 of the National Housing Act.

(c) To approve applications for financial assistance under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended; to approve the waiver of interest on loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965; to provide technical assistance to nonprofit sponsors under the Appalachian Development program; and to recommend approval or disapproval of the waiver of repayment in whole or in part of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended.

§ 200.62 Assistant Commissioner Technical and Credit Standards and Deputy.

To the position of Assistant Commissioner for Technical and Credit Standards and under his general supervision to the position of Deputy Assistant Commissioner for Technical and Credit Standards there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To be responsible for coordination and general supervision of the Architecture and Engineering Division and the Appraisal and Mortgage Risk Division comprising the functions of establishing and maintaining standards, methods, procedures, and techniques in the areas of architecture and engineering, construction cost, land planning, mortgage credit, valuation, the selection and rating of mortgage risk, the provision of technical advice and guidance in these fields to all organizational elements of the Administration; the evaluation of the technical suitability of products and materials under section 521 of the National Housing Act; and the formulation of

policies, standards, and guidelines with respect to the technical aspects of the development of low-rent public housing.

(c) To be responsible for the development of policies, standards, and procedures for land acquisition functions and for appraisal and real estate tax and title functions for land acquisition and disposition programs of the Department except urban renewal.

§ 200.63 Director of the Architecture and Engineering Division and Deputy.

To the position of Director of the Architecture and Engineering Division and under his general supervision to the Deputy Director of the Architecture and Engineering Division, there is delegated the following basic authority and functions:

(a) To develop and maintain architectural, land planning, and engineering standards, techniques, and procedures.

(b) To provide technical advice and guidance to all organizational elements of the administration in the fields of architecture, land planning, and engineering.

(c) To be responsible for the formulation of policies, standards, and guidelines relative to the technical aspects of the development of low-rent housing including site selection, site planning project design, and project planning and to develop policy and guidelines for Regional Office use in preparing appropriate cost standards for low-rent public housing.

§ 200.64 Director Appraisal and Mortgage Risk Division and Deputy.

To the position of Director of the Appraisal and Mortgage Risk Division and under his general supervision to the position of Deputy Director of the Appraisal and Mortgage Risk Division there is delegated the following basic authority and functions:

(a) To develop and maintain standards, procedures, and techniques for the valuation of property, the estimation of construction cost, determination of acceptability of mortgage credit, and for the overall determination of mortgage risk and the acceptability of mortgage risk for insurance.

(b) To provide technical advice and guidance to all organizational elements of the Administration in the fields of valuation, construction cost, mortgage credit, and risk determination.

(c) To develop policies, standards, and procedures for land acquisition functions and for appraisal and real estate tax and title functions for land acquisition and disposition programs of the Department except urban renewal.

§ 200.65 Assistant Commissioner Programs and Deputy.

To the position of Assistant Commissioner for Programs and under his general supervision to the position of Deputy Assistant Commissioner for Programs there is delegated the following basic authority and functions:

(a) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(b) To be responsible to the Commissioner for the coordination and general supervision of the Program Division, the Research and Statistics Division, and the Economic and Market Analysis Division comprising the functions of coordination of the development and formulation for the approval of the Commissioner of basic programs and related policies and program planning, the appraisal of programs and program objectives, the maintenance of a program of housing market analyses to serve all elements of the Department, advice and counsel on economic problems, conduct of actuarial studies, the provision of a complete actuarial service for all insurance programs, and statistics on the property improvement loan program and housing produced or rehabilitated under the FHA mortgage insurance programs, the low rent public housing program, the college housing program, and the Alaska housing program.

(c) To establish and circulate appropriate family income limits for individual counties and/or localities in the United States as required by operations of section 221(h), section 235(i), section 235(j), and section 236 of the National Housing Act.

§ 200.65a [Reserved]

§ 200.65b Director Economic and Market Analysis Division and Deputy.

To the position of Director of the Economic and Market Analysis Division and under his general supervision to the position of Deputy Director of the Economic and Market Analysis Division there is delegated the following basic authority and functions:

(a) To maintain a program of housing market analysis to serve all elements of the Department, including related economic, income limit, and rent schedule analyses.

(b) To establish and circulate appropriate family income limits for individual counties and/or localities in the United States as required by operations of section 221(h), section 235(i), section 235(j), and section 236 of the National Housing Act.

§ 200.66 Director of the Research and Statistics Division and Deputy.

To the position of Director of the Research and Statistics Division and under his general supervision to the position of Deputy Director of the Research and Statistics Division there is delegated the following basic authority and functions:

(a) To provide advice and counsel on economic problems.

(b) [Reserved]

(c) To maintain a program of housing statistics and statistics on the property improvement loan program and housing produced or rehabilitated under the FHA mortgage insurance programs, the low-rent public housing program, the college housing program, and the Alaska housing program.

(d) To conduct actuarial studies and provide complete actuarial service for all insurance programs.

§ 200.67 Director of the Program Division and Deputy.

To the position of Director of the Program Division and under his general supervision to the position of Deputy Director of the Program Division there is delegated the following basic authority and functions:

(a) To develop and recommend basic program plans and related policies.

(b) To maintain a continuing appraisal of the effectiveness of programs and policies.

(c) To assist and advise with respect to the development and evaluation of legislative proposals affecting the insurance programs of the Federal Housing Administration, the low-rent public housing program, the college housing program, and the Alaska housing program.

§ 200.68 Assistant Commissioner Administration and Deputy.

To the position of Assistant Commissioner for Administration and under his general supervision to the position of Deputy Assistant Commissioner for Administration there is delegated the following basic authority and functions:

(a) To be responsible for administrative-management functions of the Federal Housing Administration; organizational structures and related matters; budget activities; previous participation review; administrative staff planning and coordination of agency operations analysis activities; contracting for credit reports; management surveys, forms and records management; coordination and maintenance of the FHA manual, directives, and other issuances and instructional material; planning and liaison with the Assistant Secretary for Administration on administrative-management matters in general, with the HUD Office of Personnel on personnel policies and procedures and on FHA personnel problems, and with the HUD Office of General Services on general services required for the operation of the Federal Housing Administration; for coordination and guidance on problems of compliance with legal and regulatory requirements by participants in HPMC-FHA programs, except those under section 2 of title I of the National Housing Act, including direction of liaison with the HUD Office of Investigation with reference to requests for investigation and the reporting of the disposition of cases; and to be in charge of the Budget Division, the Management and Operations Assistance Division, the Participation and Compliance Review Division, and the Operations Analysis Staff.

(b) [Reserved]

(c) To make or cause to be made under his direction budget estimates, requests for apportionment, and allotments of funds; and to represent the Federal Housing Administration on budget matters with the Bureau of the Budget and other government agencies and organizations.

(d) To execute or cause to be executed under his direction contracts for credit reports.

(e) To take any action authorized to be taken by any division or office within his jurisdiction.

(f) To act for the Commissioner in approving the settlement of tort claims for and against the Commissioner and the execution of releases or other instruments required in connection therewith.

(g) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(h) To develop, review, evaluate, and recommend organizational structure, delegations of authority, and distribution of functions.

(i) To administer FHA's defense planning and emergency housing activities and oversee the discharge of FHA's delegated responsibilities in these matters as outlined by executive order.

(j) [Reserved]

(k) To determine in connection with departmental activities, except those under section 2 of Title I of the National Housing Act, noncompliance with rules, regulations, and instructions of the Federal Housing Administration; to refer such cases to the Inspection Division, HUD, and to maintain liaison with the Division on the disposition made of such cases.

(l) To approve for payment travel and other expenses incidental to the transfer of an employee to a new duty station, as provided in the Administrative Expenses Act.

(m) To authorize the issuance of Consolidated Travel Authorizations and the procurement of automobiles from the GSA Interagency Motor Pool, and to approve the use of Government owned or leased motor vehicles between the employee's residence and place of employment, in those cases in which it is determined that such use is necessary for the proper performance of the official duties of the employee involved, and the interests of the Government are best served.

(n) To act for the Assistant Secretary-Commissioner on any administrative matter not otherwise acted upon or assigned, and exercising any redelegable authority of the Commissioner on budget, organization, personnel and other administrative matters (including training, disciplinary actions, hours of duty, overtime, and awards) except as the Commissioner or his Deputy may personally act or otherwise specifically assign.

(o) To be responsible for the review and recommendation of approval, disapproval, or cancellation of approval of financial institutions as approved mortgagees and of firms or individuals as authorized agents for approved mortgagees.

§ 200.70 Director of the Budget Division and Deputy.

To the position of Director of the Budget Division and under his general supervision to the position of Deputy Director of the Budget Division there is delegated the following basic authority and functions:

(a) To direct all budget activities of the Federal Housing Administration and to represent the Federal Housing Administration in budget matters with the Office of Management and Budget and with other government agencies and organizations.

(b) To be responsible for the development and execution of the budget program, including the preparation of budget estimates and justification therefor; the preparation of requests for apportionment of funds and justification therefor; and the allotment of funds within the limits of appropriation acts, apportionments and other limitations.

§ 200.71 Director Participation and Compliance Review Division and Deputy; Previous Participation Review Officer.

To the position of Director of the Participation and Compliance Review Division and under his general supervision to the position of Deputy Director of the Participation and Compliance Review Division and with respect to paragraph (a) of this section to the position of Previous Participation Review Officer there is delegated the following basic authority and functions:

(a) To act for the Assistant Secretary-Commissioner in approving, with respect to the previous participation of the principals, multifamily housing, nursing homes, group practice medical facilities, nonprofit hospitals, and land development mortgage insurance proposals, upon a determination that there is no information concerning past FHA or other HUD program experience involving the previous participation of the principals that is not clearly consistent with the acceptability of new proposals involving their participation; and in all cases in which such a determination is not made, to present such cases and relevant information concerning them to the Multifamily Participation Review Committee for determination.

(b) To act for the Assistant Secretary-Commissioner and the Assistant Commissioner for Administration in providing advice and guidance on compliance problems and reference and referral service on compliance records, with respect to all HPMC–FHA programs except those under section 2 of title I of the National Housing Act, including liaison with the HUD Office of Investigation concerning requests for investigation and the reporting of the disposition of cases.

§ 200.72 Director of the Management and Operations Assistance Division and Deputy.

To the position of Director of the Management and Operations Assistance Division and under his general supervision to the Deputy Director of the Management and Operations Assistance Division there is delegated the following basic authority and functions:

(a) To direct comprehensive management engineering surveys of Washington and field operations and activities for the purpose of improving the efficiency, economy and effectiveness of operations and to develop specific recommendations for the accomplishment of these purposes.

(b) To assist in the development of the detailed plans and procedures for carrying out approved recommendations.

(c) To assist in, and to coordinate, the installation of approved recommendations.

(d) To evaluate the results of approved recommendations.

(e) To direct a comprehensive forms and records management program.

(f) To coordinate and maintain the FHA Manual, directives and other issuances and instructional material.

(g) To act for the Assistant Secretary-Commissioner in the following instances:

(1) In approving the settlement of tort claims for and against the Assistant Secretary-Commissioner.

(2) In approving the settlement of claims not exceeding $6,500 made by employees for damage or loss of personal property occurring incident to performing Government service.

(3) In executing releases or other instruments required in connection with the settlement of claims under subparagraphs (1) and (2) of this paragraph.

(h) [Reserved]

(i) To execute contracts for credit reports.

(j) To approve for payment travel and other expenses incidental to the transfer of an employee to a new duty station, as provided in the Administrative Expenses Act.

(k) To authorize the issuance of Consolidated Travel Authorizations and the procurement of automobiles from the GSA Interagency Motor Pool, and to approve the use of Government owned or leased motor vehicles between the employee's residence and place of employment, in those cases in which it is determined that such use is necessary for the proper performance of the official duties of the employee involved, and the interests of the Government are best served.

(l) To maintain a typing and stenographic service pool and a clerical services pool in support, respectively, of the administrative and nonadministrative elements of the FHA central office organization.

(m) To be responsible for the review and recommendation of approval, disapproval, or cancellation of approval of financial institutions as approved mortgagees and of firms or individuals as authorized agents for approved mortgagees.

§ 200.73 Assistant Commissioner for Rehabilitation and Deputy.

To the position of Assistant Commissioner for Rehabilitation and under his general supervision to the position of Deputy Assistant Commissioner for Rehabilitation, there is delegated the following basic authority and functions:

(a) To develop and recommend policies and establish operating plans and procedures for housing rehabilitation

under all FHA mortgage insurance programs including the insurance of mortgages under the sections 221(h) and 235(j) programs, and for the rehabilitation of housing to be acquired under the low-rent public housing program, and to provide technical advice and assistance to the field offices on housing rehabilitation and training or rehabilitation techniques.

(b) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

§ 200.77 Assistant Commissioner-Comptroller and Deputy.

To the position of Assistant Commissioner-Comptroller, and under his general supervision to the position of Deputy Assistant Commissioner-Comptroller, there is delegated the following basic authority and functions:

(a) To be responsible for coordination and general supervision of the Accounting Division, the Insurance Division, the Fiscal Division, the Procedures Division, and the Financial Reports Division.

(b) To act with the Commissioner and under his direction in the determination of basic policy and be a member of the Executive Board.

(c) To devise and establish insurance fiscal servicing, accounting and fiscal procedures and to administer the fiscal policies and activities of FHA; and to provide or cause to be provided under his direction technical advice and guidance to all organizational elements of the FHA in the fields of accounting, insurance fiscal servicing and fiscal matters.

(d) To be responsible for the establishment and maintenance of appropriate accounting, fiscal and mortgage insurance controls and for the safeguarding of cash, notes, mortgages, negotiable instruments, checks, securities, debentures, contracts and properties.

(e) To develop and recommend policies, rules and procedures governing the settlement of Title I claims.

(f) To exercise the authority of the Commissioner in any instance which is subject to the approval of the Commissioner in connection with the settlement of claims under section 2 of Title I of the National Housing Act.

(g) To direct and supervise, or cause to be directed and supervised, periodic portfolio examinations of institutions insured under the provisions of section 2 of title I of the National Housing Act.

(h) (1) To submit to the Treasury Department authorizations for:

(i) Investment of moneys held in the various insurance funds, not needed for the current operations of the FHA, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States, and

(ii) The redemption or sale of investments in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States, representing undisbursed mortgage proceeds relating to multifamily mortgages assigned to the Secretary; and

(2) To recommend, or cause to be recommended under his direction, liquidation of investments and redemption of debentures; to execute, or cause to be executed under his direction, assignments in connection with the redemption of debentures held for the account of the FHA insurance funds or received in exchange for acquired security; and to maintain, or cause to be maintained under his direction, liaison with the Treasury Department in the execution of fiscal proposals.

(3) To determine or cause to be determined under his direction the cash requirements of the various insurance funds for payment of insurance claims and to recommend borrowings from and repayments to the Treasury Department for this purpose.

(i) To certify financial statements, and to execute and submit or to cause to be executed and submitted under his direction to the Treasury Department and/or to the Office of Management and Budget intergovernmental financial reports required by applicable statutes or regulations of the Treasury Department or Office of Management and Budget.

(j) To designate certifying officers and to revoke such designation, to execute and submit to the Treasury Department necessary statements and schedules with respect thereto, and perform all functions pertaining to the bonding of FHA employees, pursuant to applicable statutes, regulations, and the standards and procedures of the Secretary of the Treasury thereunder.

(k) To submit or cause to be submitted under his direction to the Treasury Department (1) authorizations for (i) purchase of U.S. Government securities, pursuant to agreements between mortgagors or other depositors and FHA and (ii) sale and disposition of U.S. Government securities purchased for mortgagors or other depositors, received as a result of assignment of insured mortgages or as a result of other agreements; (2) for safekeeping, U.S. Government securities deposited in accordance with mortgagor corporate charters, regulatory or special agreements; and (3) requests for withdrawal of U.S. Government securities.

(l) [Reserved]

(m) To develop and maintain or cause to be developed and maintained under his direction a program for the fiscal servicing of all Secretary-held home and project mortgages; to execute or cause to be executed under his direction all vouchers for expenditures from mortgagor's escrow accounts, for payment of taxes on home and project properties where title is vested in the Secretary and, with respect to home properties acquired by the Secretary, vouchers for payment of excess proceeds to effect final settlement on certificates of claim; and to execute and receipt or cause to be executed and receipted under his direction applications and receipts for any payments received representing refunds of taxes or other payments made by the Secretary in connection with property acquired by the Secretary under the provisions of the National Housing Act.

(n) To keep or cause to be kept under his direction a seal of the Department of Housing and Urban Development; to certify as to delegations of authority by the Assistant Secretary-Commissioner, and as to the truth or accuracy of copies of original papers or documents in the possession of the FHA; to prepare and execute notarized affidavits for the use of U.S. Attorneys in presenting the fiscal status of Secretary-held mortgages at foreclosure trials; and to maintain the Archives files of FHA.

(o) To recommend the terms and conditions under which FHA offers to sell purchase money mortgages and assigned mortgage notes to approved mortgagees; upon approval of the recommendation make offers for the sale of such mortgages and assigned notes; and execute in the name of the Secretary acceptance of such offers.

(p) To endorse, or cause to be endorsed under his direction, mortgage notes for insurance; to take, or cause to be taken under his direction, any action necessary to consummate the sale of Secretary-held mortgages to purchasers of such mortgages; and to execute, or cause to be executed, satisfactions of Secretary-held mortgages when the mortgage indebtedness has been paid in full.

(q) To endorse, or cause to be endorsed under his direction, checks and other negotiable instruments for deposit or collection; to endorse, or cause to be endorsed under his direction, loss drafts relating to insurance coverage on Secretary-held home and project mortgages; to endorse, or cause to be endorsed under his direction, checks and other negotiable instruments in order to perfect negotiability for other parties at interest where the Secretary is not entitled to the proceeds of such instruments, relating to applications for insurance benefits; and to execute assignments and other instruments pertaining to the sale or other disposition of stock or other securities received as a result of agreements between mortgagors or other depositors and FHA.

(r) To approve or cause to be approved under his direction all expenditures and to receipt or cause to be receipted under his direction all vouchers necessary to carry out the provisions of the National Housing Act.

(s) To certify or cause to be certified under his direction that all required documents, information and approvals respecting each transaction are present; verify or cause to be verified under his direction the accuracy of the computations, the consistency of the information included in the various documents and determined or cause to be determined under his direction that the transactions are in strict accordance with all applicable regulations, decisions and laws.

(t) To approve or disapprove, or cause to be approved or disapproved under his direction, amounts claimed by mortgagees in their applications for insurance

benefits, including amounts for operating, protecting and preserving properties prior to conveyance to the Secretary; to execute, or cause to be executed under his direction, Certificates of Claim; to certify, or caused to be certified under his direction, the requisitions to the Treasury Department for the issuance of debentures; to certify, or caused to be certified under his direction, vouchers for cash settlement of applications for insurance benefits; and to approve or disapprove, or cause to be approved or disapproved under his direction, the purchase of debentures submitted by mortgagees in connection with the payment of mortgage insurance premiums and adjusted premium charges.

(u) To extend or cause to be extended under his direction the period of time for submission of fiscal data or title evidence supporting a mortgagee's application for debentures.

(v) To maintain or cause to be maintained under his direction liaison with the General Accounting Office, Treasury Department and other agencies of the Government on accounting, insurance fiscal servicing and fiscal matters and to collaborate with such departments and agencies in the formation of accounting and fiscal programs.

(w) To issue, or cause to be issued, duplicate or corrective Mortgage Insurance Certificates; to cancel, or cause to be canceled under his direction, insurance endorsement or the Mortgage Insurance Certificate on insured mortgages where a joint request for termination is made by the mortgagor and mortgagee, or when the insurance endorsement or the Mortgage Insurance Certificate is otherwise to be canceled; and to exercise the authority of the Commissioner in any instance which is subject to the approval of the Commissioner in connection with the prepayment or voluntary termination of insured mortgages.

(x) To take any action authorized to be taken by any branch or office within his jurisdiction.

(y) To exercise, or cause to be exercised, the authority of the Commissioner to endorse any preferred stock certificate held by him in any corporation for the purpose of retirement and cancellation.

(z) To approve the sale and terms of sale of mortgages taken as security in connection with the sale of property acquired in connection with Federal Housing Administration insurance claims.

(aa) With respect to the Appalachian Housing Fund, pursuant to the Appalachian Regional Development Act of 1965:

(1) To reserve or, as appropriate, record, or cause to be reserved or recorded, all approved reservations of funds and to record and control, or cause to be recorded and controlled, all obligations of funds for loans under this fund.

(2) To disburse, or cause to be disbursed, moneys in the fund for making loans to sponsors for development of applications for commitments for project mortgages for projects under section 207 of the Appalachian Regional Development Act of 1965 approved pursuant to section 223 of such Act and for general expenses of administration of section 207 of such Act; and

(3) To collect, or cause to be collected, the loan repayments and interest thereon.

(bb) With respect to section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966: To perform, or cause to be performed, all fiscal duties and functions necessary to comply with the requirements of the agreement entered into between the Department of Defense and the Department of Housing and Urban Development.

(cc) With respect to the Low and Moderate Income Sponsor Fund, pursuant to section 106 of the Housing and Urban Development Act of 1968:

(1) To reserve or, as appropriate, record, or cause to be reserved or recorded, all approved reservations of funds and to record and control, or cause to be recorded and controlled, all obligations of funds for loans made under the fund.

(2) To disburse, or cause to be disbursed, moneys in the fund for making loans, without interest, to nonprofit sponsors of housing for low and moderate income families; and

(3) To collect, or cause to be collected, the loan repayments.

(dd) To reserve or, as appropriate, record, or cause to be reserved or recorded, all approved reservations of contract authority and to record and control, or cause to be recorded and controlled, all contractual obligations of contract authority pertaining to assistance payment contracts under section 235; interest reduction contracts under section 236; contracts for debt management or counseling services under section 237; and contracts for rent supplement payments, pursuant to section 101 of the Housing and Urban Development Act of 1965, and amendments thereto.

(ee) To establish and maintain or cause to be established and maintained under his direction an account for the deposit of fees collected under the Interstate Land Sales Full Disclosure Act; and to make disbursements from appropriated funds and receipts, for general expenses of administration of the land sales registration under such Act and make refunds of overpayments of land sales registration fees.

(ff) To reendorse, or cause to be reendorsed, for insurance under section 222 eligible mortgages on single-family dwellings insured under other home mortgage sections of the Act, where the mortgages have been assumed by eligible servicemen.

(gg) To approve or disapprove, or cause to be approved or disapproved under his direction, the settlement of mortgagees' applications for insurance benefits without deduction from the insurance benefits for losses occasioned by fire damage to home properties or by fire and other hazards to multifamily properties, in accordance with the provisions of §§ 203.379(b) and 207.260(d), respectively, of the FHA regulations.

(hh) To extend, or cause to be extended under his direction, the period of time for assignment to the Secretary of a mortgage on which the assistance payment contract has been terminated because of nonoccupancy by the original mortgagor or qualified purchaser.

(ii) To approve or disapprove, or cause to be approved or disapproved, certificates of interest rate changes submitted by mortgagees with respect to mortgages with flexible interest rates insured under section 236.

§ 200.78 Director Accounting Division and Deputy.

To the position of Director, Accounting Division, and under his general supervision to the position of Deputy Director, Accounting Division, there is delegated the following basic authority and functions:

(a) To direct the activities of the Accounting Division.

(b) To devise and establish accounting procedures and policies and to maintain official accounting records for all activities of the Administration.

(c) To devise and establish procedures and policies and to maintain official records for all home properties and mortgages held by the Secretary.

(d) To provide technical advice and guidance to all organizational elements of the Administration in the fields of accounting, including property and mortgage servicing accounting.

(e) To maintain liaison with the General Accounting Office, Treasury Department and other agencies of the Government on accounting matters and to collaborate with such departments and agencies in the formation of accounting programs.

(f) To maintain liaison with the Government National Mortgage Association and other Government agencies on matters pertaining to the sale and insurance of Secretary-held mortgages.

(g) To endorse mortgage notes for insurance and to take any action necessary to consummate the sale of Secretary-held mortgages to purchasers of such mortgages.

(h) To develop and maintain a program for the fiscal servicing of Secretary-held home mortgages including the execution of vouchers for expenditures from mortgagors' escrow accounts.

(i) To execute vouchers for payment of taxes on home properties where title is vested in the Secretary and for payment of excess proceeds to effect final settlement with mortgagees on certificates of claim under provisions of the National Housing Act.

(j) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic policies on accounting and the fiscal servicing of home property and mortgage note accounts.

(k) With respect to the Appalachian Housing Fund, pursuant to the Appalachian Regional Development Act of 1965:

(1) To reserve or, as appropriate, record all approved reservations of funds and to record and control all obligations of funds for loans under this fund.

(2) To disburse moneys in the fund for making loans to sponsors for development of applications for commitments for project mortgages for projects under section 207 of such Act, approved pursuant to section 223 of such Act, and for general expenses of administration of section 207 of such Act; and

(3) To collect the loan repayments and interest thereon.

(l) With respect to section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966: To perform all fiscal duties and functions necessary to comply with the requirements of the agreement entered into between the Department of Defense and the Department of Housing and Urban Development.

(m) With respect to the Low and Moderate Income Sponsor Fund, pursuant to section 106 of the Housing and Urban Development Act of 1968:

(1) To reserve or, as appropriate, record all approved reservations of funds and to record and control all obligations of funds for loans made under the fund.

(2) To disburse moneys in the fund for making loans, without interest, to nonprofit sponsors of housing for low and moderate income families; and

(3) To collect the loan repayments.

(n) To reserve or, as appropriate, record all approved reservations of contract authority and to record and control all contractual obligations of contract authority pertaining to assistance payment contracts under section 235; interest reduction contracts under section 236; contracts for debt management or counseling services under section 237; and contracts for rent supplement payments, pursuant to section 101 of the Housing and Urban Development Act of 1965, and amendments thereto; and

(o) To establish and maintain an account for the deposit of fees collected under the Interstate Land Sales Full Disclosure Act.

§ 200.79 Director Insurance Division and Deputy.

To the position of Director, Insurance Division, and under his general supervision to the position of Deputy Director, Insurance Division, there is delegated the following basic authority and functions:

(a) To direct the activities of the Insurance Division.

(b) To devise and maintain procedures relating to the establishment of mortgage insurance records, the modification and termination of such insurance for home and project mortgages and to register Title I loans reported for insurance.

(c) To provide fiscal and technical advice and guidance with respect to mortgage modifications prior to administrative approval.

(d) To cancel the insurance endorsement or the Mortgage Insurance Certificate on insured mortgages when a joint request for termination is made by the mortgagor and mortgagee, or when the insurance endorsement or the Mortgage Insurance Certificate is otherwise to be cancelled.

(e) To ascertain sufficiency of renewal and adjusted premium collections with respect to termination of insurance; authorize refund of unearned premiums collected or institute billing for the collection of premiums due.

(f) To authorize payment of earned distributive shares in the Participation Reserve Account of the Mutual Mortgage Insurance Fund to the rightful recipients thereof.

(g) To devise and maintain procedures relating to the fiscal servicing of Secretary-held project mortgages and to execute vouchers for payment of all expenditures from mortgagor escrow accounts relating thereto.

(h) To develop and maintain fiscal procedures for the operation of Secretary-owned project properties by agents of the Secretary under contract for the management of such properties; to provide advice and guidance to those agents with respect to such fiscal procedures, and to execute vouchers for payment of real estate taxes, special assessments, hazard insurance, and repairs relating to such properties.

(i) To certify vouchers in payment of Title I claims representing the insurable loss sustained and to refund to the remitter of record any collections obtained in excess of the established indebtedness.

(j) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic insurance fiscal servicing policy.

(k) To direct and supervise periodic portfolio examinations of institutions insured under the provisions of section 2 of title I of the National Housing Act.

(l) To execute satisfactions and releases of Secretary-held mortgages when the mortgage indebtedness has been paid in full.

(m) To issue duplicate or corrective Mortgage Insurance Certificates.

(n) To exercise the authority of the Commissioner to endorse any preferred stock certificate held by him in any corporation for the purpose of retirement and cancellation.

(o) To reendorse for insurance under section 222 eligible mortgages on single-family dwellings insured under other home mortgage sections of the Act, where the mortgages have been assumed by eligible servicemen; and

(p) To approve or disapprove certificates of interest rate changes submitted by mortgagees with respect to mortgages with flexible interest rates insured under section 236.

§ 200.80 Director Fiscal Division and Deputy.

To the position of Director, Fiscal Division, and under his general supervision to the position of Deputy Director, Fiscal Division, there is delegated the following basic authority and functions:

(a) To direct the activities of the Fiscal Division.

(b) To devise and establish fiscal procedures and to administer the fiscal policies and activities of the Administration.

(c) To approve all operating and property expenditures and receipt vouchers necessary to carry out the provisions of the National Housing Act upon his determination that they are in accordance with applicable regulations, decisions and laws.

(d) To certify that all required documents, information and approvals with respect to operating and property expense and debenture transactions are present; to verify the accuracy of the computations and the consistency of the information included in the various documents; to determine that the transactions are in strict accordance with all applicable regulations, decisions and laws; to execute Certificates of Claim; to certify requisitions to the Treasury Department for the issuance of debentures; and to certify vouchers for cash settlement of applications for insurance benefits.

(e) To approve or disapprove amounts claimed by mortgagees in their applications for insurance benefits, including amounts for operating, protecting and preserving properties prior to conveyance to the Secretary.

(f) To extend the period of time for submission of fiscal data or title evidence supporting a mortgagee's application for insurance benefits.

(g) To maintain liaison with the General Accounting Office, Treasury Department and other agencies of the Government on fiscal matters and to collaborate with such departments and agencies in the formation of fiscal programs.

(h) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic fiscal policy.

(i) To make disbursements to mortgagees for assistance payments under section 235; interest reduction payments under section 236; payments under contracts with public or private organizations to provide budget, debt management, and related counseling services to mortgagors whose mortgages are insured under section 237; and payments to mortgagors under contracts for rent supplement payments pursuant to section 101 of the Housing and Urban Development Act of 1965 and amendments thereto, and to process notices of termination of assistance payment contracts due to nonoccupancy by original mortgagors or qualified purchasers or for other reasons and collect any overpaid assistance payments.

(j) To be responsible for the collection, receipt and deposit of all funds covering fees, premiums and other charges affecting FHA programs.

(k) To approve or disapprove the settlement of mortgagees' applications for insurance benefits without deduction from the insurance benefits for losses occasioned by fire damage to home properties or by fire and other hazards to multifamily properties, in accordance with the provisions of §§ 203.379(b) and 207.260(d), respectively, of the FHA regulations.

(l) To approve or disapprove the purchase of debentures submitted by mortgagees in connection with the payment of mortgage insurance premiums and adjusted premium charges.

(m) To endorse checks and other negotiable instruments for deposit or collection; to endorse loss drafts relating to insurance coverage on Secretary-held home and project mortgages; to endorse checks and other negotiable instruments in order to perfect negotiability for other parties at interest, where the Secretary is not entitled to the proceeds of such instruments, relating applications for insurance benefits.

(n) To deposit fees collected under the Interstate Land Sales Full Disclosure Act, and to make disbursements from appropriated funds and receipts for general expenses of administration of land sales registration under such Act and make refunds of overpayments of land sales registration fees.

(o) To extend the period of time for assignment to the Secretary of a mortgage on which the assistance payment contract has been terminated because of nonoccupancy by the original mortgagor or qualified purchaser.

§ 200.81 Director Procedures Division and Deputies.

To the position of Director, Procedures Division, and under his general supervision to the position of Deputy Director for Accounting Systems with respect to paragraphs (a), (b), (f), (g), (h), (i), and (j) of this section and to the position of Deputy Director for Automatic Data Processing with respect to paragraphs (c), (d), and (e) of this section, there is delegated the following basic authority and functions:

(a) To initiate, develop, and maintain an accounting systems and procedures program for the Administration.

(b) To coordinate and direct a program to preserve or reconstruct basic records of the Administration for Civil Defense purposes and in the event of a national emergency.

(c) To serve as a member of the Departmental ADP Services Management Advisory Committee.

(d) To advise the FHA Automatic Data Management Board with respect to data, information, and reports requirements of the Administration, recommending systems and procedures for gathering the input data for processing by the Departmental Office of ADP Systems Management and Operations.

(e) To maintain liaison with the Office of ADP Systems Management and Operations with respect to FHA fiscal and reporting operations.

(f) To prepare for the Assistant Secretary-Commissioner letters to FHA approved mortgagees and lenders pertaining to fiscal and accounting procedures.

(g) To provide advice within FHA concerning field office accounting, fiscal insurance servicing procedures, assessability of fees, and the interpretation of related procedures.

(h) To review for fiscal implications proposed agreements with other Government agencies establishing procedures pertaining to special-purpose programs.

(i) To provide liaison service with the Treasury Department pertaining to depositary facilities for FHA field offices.

(j) To maintain archives files of the Administration.

§ 200.82 Director Financial Reports Division and Deputy.

To the position of Director, Financial Reports Division, and under his general supervision to the position of Deputy Director, Financial Reports Division, there is delegated the following basic authority and functions:

(a) To direct the activities of the Financial Reports Division.

(b) To devise and establish basic policies, practices, and procedures with respect to the preparation, analysis, and interpretation of the financial statements and fiscal reports of the Administration, and to direct the preparation of such statements and reports.

(c) To maintain effective control over the management of the various FHA insurance funds and accounts and to provide adequate financial information pertaining thereto.

(d) To submit to the Treasury Department authorizations for purchase of U.S. Government securities, pursuant to agreements between mortgagors or other depositors and FHA, and sales and disposition of U.S. Government securities purchased for mortgagors or other depositors, received as a result of assignment of insured mortgages or as a result of other agreements; U.S. Government securities deposited in accordance with mortgagor corporate charters, regulatory or special agreements, for safekeeping; and requests for withdrawal of U.S. Government securities.

(e) To execute and certify vouchers in payment of U.S. Government securities invested for the various insurance funds and/or pursuant to agreements between mortgagors or other depositors and FHA.

(f) To execute and certify vouchers to provide funds in the account of the Treasurer of the United States for payment of principal and interest on FHA debentures, for the repayment of borrowed funds and interest thereon, and for return to the Treasury Department of surplus funds arising out of operations of certain accounts.

(g) To execute and submit to the Treasury Department and/or to the Office of Management and Budget intergovernmental financial reports required by applicable statutes or regulations of the Treasury Department or Office of Management and Budget.

(h) To maintain liaison with the General Accounting Office, Treasury Department and Office of Management and Budget on matters pertaining to financial activities, and with mortgagees concerning the acceptance of debentures in exchange for mortgages held by the Secretary.

(i) To act with the Assistant Commissioner-Comptroller and under his direction in the determination of basic financial management and reporting policy.

(j) To determine the present and future cash requirements of the various insurance funds and accounts, and to recommend investment, borrowing and repayment transactions.

(k) To prepare certifications to Department of Defense, National Aeronautics and Space Administration, and Atomic Energy Commission of operating losses incurred by FHA under Armed Services Housing Insurance programs as provided for in agreements.

(l) To recommend liquidation of investments and redemption of debentures; to execute assignments in connection with the redemption of debentures held for the account of the FHA insurance funds or received in exchange for acquired security; and to maintain liaison with the Treasury Department in the execution of fiscal proposals.

§ 200.84 [Reserved]

§ 200.84a [Reserved]

§ 200.84b Field Office Directors, Deputies, and Assistants.

To the position of Field Office Director, and to each of them; and to the position of Deputy Field Office Director, and to each of them under the general supervision of the Field Office Director having jurisdiction; and to the position of Assistant Field Office Director, and to each of them under the general supervision of the Field Office Director having jurisdiction there is delegated the basic authority and function to direct and supervise all activities of the Federal Housing Administration in the geographical area under his jurisdiction.

§ 200.84c Director of the Multifamily Housing Insuring Office (New York).

To the position of Director of the Multifamily Housing Insuring Office (New York) there is delegated the following duties and functions:

(a) To direct multifamily housing mortgage insurance operations and project mortgage servicing operations in the State of New York and to provide advice, guidance, and assistance on multifamily housing to other insuring offices in departmental Region I.

§ 200.84d [Reserved]

§ 200.84e Director, Compliance Coordination.

To the position of Director, Compliance Coordination, there is delegated the following basic authority and functions:

(a) With respect to departmental activities, to determine noncompliance with statutes, including the criminal statutes, rules, regulations, policies, and procedures, and instructions governing FHA operations and participants in FHA programs, except section 2 of Title I of the National Housing Act, and to refer cases requiring investigation to the Inspection Division, HUD.

(b) To recommend administrative action and assure that appropriate and timely action is taken, and to maintain liaison, as required, with the Inspection Division, HUD, and central control records on the referral, findings, and disposition of all compliance cases, except those relating to section 2 of Title I of the National Housing Act.

(c) To assist the Deputy Employment Policy Officers, and the Deputy Contracts Compliance Officers with compliance activities under the Executive orders for equal opportunity in housing, equal employment opportunity in government and on government contracts and government-assisted contracts.

(d) To maintain continuing liaison, as required, with the Inspection Division, HUD, on Equal Opportunity in Housing and Equal Employment Opportunity.

DELEGATIONS TO COMMITTEES

§ 200.85 Executive Board.

(a) Members. The committee called the Executive Board is comprised of the following members: Assistant Secretary-Commissioner, Chairman; Deputy Assistant Secretary, Vice Chairman; Executive Assistant Commissioner; Assistant Commissioner for Field Operations; Assistant Commissioner for Subsidized Housing Programs; Assistant Commissioner for Unsubsidized Insured Housing Programs; Assistant Commissioner for Property Improvement; Assistant Commissioner for Technical and Credit Standards; Assistant Commissioner for Programs; Assistant Commissioner for Administration; Assistant Commissioner for Rehabilitation; and Assistant Commissioner-Comptroller.

(b) *Functions.* The functions of the Executive Board are to consider and advise with respect to basic policy, plans and general program matters of the Administration.

(c) *Minutes.* The Commissioner shall designate a secretary to the Board who shall prepare minutes of each Board meeting, which shall constitute the official record of matters considered and actions taken by the Board. Such minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of such minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

§ 200.86 Security Committee.

(a) *Members.* The Security Committee is comprised of the following members: Personnel Security Officer, Chairman; Assistant Commissioner for Administration, Vice Chairman; and Deputy Assistant Commissioner for Field Operations.

(b) *Functions.* The functions of the Security Committee are:

(1) To make recommendations to the Commissioner from time to time with respect to the designation of sensitive positions under the Security Regulations of the FHA, or the revocation of such designations.

(2) To advise with and make recommendations to the Commissioner regarding any security matter which the Personnel Security Officer may bring before the committee for advice or consultation.

§ 200.87 Management Improvement Committee.

(a) *Members.* The Management Improvement Committee is composed of the following members: Director of the Management and Operations Assistance Division, Chairman; Staff Adviser to the Assistant Commissioner for Administration, Vice Chairman; and one designee of each of the following: Assistant Commissioner-Comptroller, Assistant Commissioner for Subsidized Housing Programs; Assistant Commissioner for Property Improvement; Assistant Commissioner for Technical and Credit Standards; Assistant Commissioner for Unsubsidized Insured Housing Programs; Assistant Commissioner for Programs; Assistant Commissioner for Field Operations; Assistant Commissioner for Rehabilitation; and Director of the Budget Division.

(b) *Functions.* The functions of the Management Improvement Committee are to maintain and operate an FHA Employee Suggestion System within the framework of the over-all Employee Awards Program.

§ 200.89 Substantial Compliance Committee.

(a) *Members.* (1) The Substantial Compliance Committee is comprised of the following members: Assistant Commissioner for Property Improvement, Chairman; Assistant Commissioner-Comptroller; Assistant Commissioner for Administration; and Assistant Commissioner for Programs, or their designees.

(2) Three members shall constitute a quorum.

(b) *Functions.* The functions of the Substantial Compliance Committee are to waive compliance with regulations heretofore or hereafter prescribed with respect to the interest and maturity of, and the terms, conditions, and restrictions under which loans, advances of credit and purchases may be insured under section 2 of Title I of the National Housing Act if, in the judgment of the committee, the enforcement of such regulations would impose an injustice upon an insured institution which has substantially complied with such regulations in good faith and has refunded or credited any excess charge made, and if such waiver does not involve an increase of the obligation which would have been involved if the regulations had been fully complied with.

(c) *Minutes.* This committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. Such minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of such minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

§ 200.90 Finance Committee.

(a) *Members.* The Finance Committee is comprised of the following members: Director, Research and Statistics Division, Chairman; Assistant Commissioner-Comptroller; Assistant Commissioner for Administration; and Deputy Director of the Office of Property Disposition—Housing Management, or his designee.

(b) *Functions.* The functions of the Finance Committee are;

(1) [Reserved]

(2) To make recommendations to the Commissioner from time to time with respect to (i) the liquidation of investments held in the name of the Commissioner and (ii) redemption of debentures.

(3) To make recommendations to the Commissioner with respect to the distribution between the General Surplus Account and the Participating Reserve Account of the net income received or net loss sustained by the Mutual Mortgage Insurance Fund in any semiannual period.

(4) To make recommendations to the Commissioner for the establishment of annual valuation reserves on assets acquired pursuant to the terms of insurance contracts under the various insurance funds.

(5) To advise with and make recommendations to the Commissioner with respect to other matters referred to the Committee by the Commissioner.

(c) *Minutes.* The Finance Committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. The minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of the minutes shall be retained by the Assistant Commissioner-Comptroller, in the official FHA records.

§ 200.91 Operations Analysis Policy Committee.

(a) *Members.* The Operations Analysis Policy Committee is comprised of the following members: Deputy Commissioner, Chairman; Executive Assistant Commissioner; Assistant Commissioner for Field Operations; Assistant Commissioner for Programs; and Assistant Commissioner for Administration.

(b) *Functions.* The functions of the Operations Analysis Policy Committee are to guide, develop, and coordinate concerted analysis of agency operations, methods, standards, criteria, policies, and operating results and to develop basic improvements and make recommendations for modifications in procedure, concept, and, as appropriate, policy.

§ 200.92 Structural Defects Committee.

(a) *Members.* The Structural Defects Committee is composed of the following members: Director, Single Family Division, Chairman; Assistant Commissioner-Comptroller; and Assistant Commissioner for Technical and Credit Standards, or their designees.

(b) *Functions.* The functions of the Structural Defects Committee are to take appropriate action in exceptionally difficult or questionable cases relating to expenditures to correct or compensate for structural defects in houses financed with insured mortgages. Action on any

case may be taken by the committee on its own initiative or on the basis of recommendations and findings of a Field Office Director.

§ 200.93 Multifamily Participation Review Committee.

(a) *Members.* The Multifamily Participation Review Committee shall consist of the following officials or their deputies: Assistant Commissioner for Field Operations, Chairman; Assistant Commissioner for Administration, Vice Chairman; Assistant Commissioner for Technical and Credit Standards; Assistant Commissioner for Unsubsidized Insured Housing Programs; Assistant Commissioner for Subsidized Housing Programs; Assistant Commissioner for Rehabilitation; Director of the Participation and Compliance Review Division; and such other members as the Assistant Secretary-Commissioner shall designate. The Chairman or the Vice Chairman shall preside at each meeting of the committee. The Previous Participation Review Officer shall be Executive Secretary of the Committee.

(b) *Functions.* To act for the Assistant Secretary-Commissioner in determining the acceptability of new multifamily proposals, taking into consideration all past FHA and HUD experience with the principals.

§ 200.94 Loan Assistance Committee.

(a) *Members.* The Loan Assistance Committee is composed of the following members: Assistant Commissioner for Subsidized Housing Programs, Chairman; Assistant Commissioner-Comptroller; and Assistant Commissioner for Programs, or their designees.

(b) *Function.* The function of the Loan Assistance Committee is to approve or disapprove the waiver of repayment in whole or in part of loans made under section 106 of the Housing and Urban Development Act of 1968 and section 207 of the Appalachian Regional Development Act of 1965, as amended.

(c) *Minutes.* The Committee shall meet at the call of the Chairman and shall maintain minutes of each meeting. Such minutes shall be dated, consecutively numbered and shall be signed by each member who attended the meeting. The original of such minutes shall be retained by the Assistant Commissioner-Comptroller in the official FHA records.

MISCELLANEOUS DELEGATIONS

§ 200.95 Field Office Chiefs of Operations and Assistants to the Directors.

To the position of Field Office Chief of Operations, and to each of them, and to the position of Field Office Assistant to the Director, and to each of them, there is delegated the following duties and functions:

(a) To execute regulatory agreements and to issue eligibility statements and commitments for insurance and to execute insurance contracts pursuant to such commitments, including mortgage insurance certificates.

(b) To approve a change in amount, a change in term, extension of the date of commencement of construction, extension of the expiration date, or any other modification in the commitment for insurance or insurance contract.

(c) To approve permissible refunds of processing fees.

(d) To consent to the release of mortgagors.

(e) To consent to the release of portions of mortgaged property from the lien of the mortgage.

(f) To approve or disapprove for mortgage insurance advances of mortgage money during construction and execute such instruments as may be necessary in connection therewith.

(g) To approve or disapprove "Change Orders" during construction.

(h) To direct field office physical inspections of properties covered by insured project mortgagees, examination of operating reports and mortgagee annual inspection reports, and to institute corrective action to cure deficiencies disclosed by such inspections and reports.

(i) To approve or disapprove requests from mortgagors for permission:

(1) To furnish rental units.

(2) To provide tenants with equipment or services not contemplated in the original processing of the application for mortgage insurance or, in the case of a Commissioner-held purchase money mortgage, not contemplated at the time of sale.

(3) To alter, modify, or add to the physical structure.

(4) To withdraw funds from replacement reserves for replacement of items originally scheduled.

(j) To approve or disapprove rent increases and seasonal rental charges in rental projects covered by insured or Commissioner-held mortgages and to investigate and determine action to be taken on tie-in charges for apartment, garage, furniture, and equipment rentals.

(k) To approve or disapprove the plan of management of cooperative mortgagors under an insured mortgage.

(l) In connection with cooperative projects covered by insured mortgages, to determine the adequacy of carrying charges and approve or disapprove such charges.

(m) To exercise the authority of the Commissioner, where required, in granting prior credit approval under the provisions of Title I of the National Housing Act and regulations thereunder.

(n) To approve or disapprove requests of a mortgagee to obtain title by deed in lieu of foreclosure to property covered by an insured home mortgage.

(o) To approve or disapprove requests of mortgagees for extension of the regulatory period for commencement of foreclosure, the regulatory period for election to assign the mortgage to the Commissioner and the regulatory period within which to tender properties to the Commissioner.

(p) To approve or disapprove plans to reinstate defaulted Commissioner-held mortgages and to initiate action to cure defaults of Commissioner-held and insured mortgages.

(q) In connection with the new home loan provisions of the regulations issued pursuant to Title I of the National Housing Act, to approve the sale by insured institutions of acquired property where the insured institution exercises its option to sell the property in the open market in lieu of conveyance to the Commissioner.

(r) To assess late charges against delinquent mortgagors under Commissioner-held home mortgages.

(s) To determine and initiate action to acquire properties under defaulted Commissioner-held home mortgages by foreclosure.

(t) To direct the affairs of mortgagor corporations when control has been assumed by the Federal Housing Commissioner as preferred stockholder.

(u) In connection with the sale, rental, maintenance, or management of acquired properties or properties of the United States over which FHA has been granted custody or possession by another agency or agencies of the United States or properties held as mortgagee in possession, to execute contracts for supplies and services and to issue orders for the publication of notices and advertisements in newspapers, magazines, and periodicals, all in accordance with the provisions of the FHA manual.

(v) To approve offers to rent or purchase individually acquired 1- to 4-family units and to execute contracts for the sale of any properties and projects owned by the Federal Housing Commissioner or over which FHA has been granted custody or possession by another agency or agencies of the United States upon approval of any such sale by competent authority.

(w) In connection with the sale of Commissioner-owned properties or projects or properties of the United States over which FHA has been granted custody or possession by another agency or agencies of the United States, to convey and to execute in the name of the Commissioner, deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein heretofore or hereafter acquired by the Commissioner pursuant to the provisions of the National Housing Act or pursuant to an agreement with another agency or agencies of the United States, and to consent to the assignment of the interest of the contract purchaser under a contract for deed and to the substitution of mortgagor under a mortgage held by or entrusted to the Commissioner.

(x) To execute applications and other documents in connection with any function which the Federal Housing Administration may perform for any other agency or agencies of the United States.

(y) To endorse loss drafts and checks for settlement of claims for insurance losses on insured mortgages and Commissioner-held mortgages, both home and multifamily.

(z) To make findings and recommendations and take appropriate action in

cases relating to the correction of structural defects in houses financed with insured mortgages.

(aa) To certify the eligibility of individual tenants for rent supplement payments, to execute contracts for rent supplement payments, to approve a change in amount, a change in terms, or any other modification in the contracts for rent supplement payments.

(bb) To make the high cost determinations for the Federal National Mortgage Association prescribed in section 305(g) of the National Housing Act.

(cc) To make contracts for interest assistance payments under sections 235 and 236 of the National Housing Act and to approve change in amount, change in term, or any other modification in such contracts.

§ 200.96 Field Office Directors, Deputy Directors and Assistant Directors; and Director, Multifamily Housing Insuring Office (New York).

To the position of Field Office Director, and to each of them; and to the position of Deputy Field Office Director, and to each of them; and to the position of Assistant Field Office Director, and to each of them; and with respect to insurance and servicing of multifamily housing project mortgages to the position of Director, Multifamily Housing Insuring Office (New York), there is delegated the following duties and functions:

(a) The duties and functions as set forth in § 200.95.

(b) To act for the Commissioner in determining applicable mortgage limits for communities in the insuring office jurisdiction for all mortgage insurance programs for which the Commissioner is authorized to increase basic mortgage limits provided by law where cost levels so require.

(c) To make reservations of contract authority for interest assistance under section 235 of the National Housing Act and to modify or cancel such reservations of contract authority.

(d) To approve loans under section 106 of the Housing and Urban Development Act of 1968 subject to the availability of funds, and under section 207 of the Appalachian Regional Development Act of 1965, as amended, subject to the availability of funds and concurrence of the Appalachian Regional Commission and to approve waiver of interest on loans made to nonprofit organizations under the Appalachian Regional Development Act of 1965.

§ 200.97 Assistant Commissioner for Field Operations and Deputy; Assistant Commissioner for Home Mortgages and Deputy; Assistant Commissioner for Property Improvement and Deputy; and the Assistant Commissioner for Multifamily Housing and Deputy and Division Directors under their supervision.

To the positions of Assistant Commissioner for Field Operations and his Deputy; and as they apply to home mortgage insurance operations to the positions of Assistant Commissioner for Home Mortgages and his Deputy; and as they apply to property improvement loans under section 2 of title I of the National Housing Act to the positions of Assistant Commissioner for Property Improvement and his Deputy; and as they apply to multifamily housing mortgages to the positions of Assistant Commissioner for Multifamily Housing and his Deputy, and as they apply to multifamily housing project mortgage servicing to the positions of Director, Project Mortgage Servicing Division, and his Deputy and to the positions of branch chief and to each of them under their supervision, and as they apply to project mortgage insurance initiation to the positions of Director, Project Mortgage Insurance Division, and his Deputy and to the positions of branch chief and to each of them under their supervision, there is delegated the following duties and functions.

(a) To exercise the authority of the Commissioner under the Administrative Regulations pursuant to any section or title of the National Housing Act in any instance requiring the approval of the Commissioner.

(b) (1) To approve the insurance of mortgages taken as security in connection with the sale of properties conveyed to the Federal Housing Commissioner.

(2) To the positions in this section there are delegated the duties and functions as set forth in § 200.95.

§ 200.98 Chief Underwriter and Deputy, Chief Mortgage Credit Examiner and Deputy, Chief Appraiser and Deputy, Commitment Appraiser, and Commitment Mortgage Credit Examiner.

To the positions of Chief Underwriter, Deputy Chief Underwriter, Chief Mortgage Credit Examiner, Deputy Chief Mortgage Credit Examiner, Chief Appraiser, Deputy Chief Appraiser, and to each of them, and with respect to the issuance of commitments to the positions of Commitment Appraiser and Commitment Mortgage Credit Examiner, and to each of them, there is delegated the following duties and functions:

(a) To issue commitments for insurance under any home mortgage insurance program and to approve modifications of such commitments for insurance.

(b) To make the high cost determinations for the Federal National Mortgage Association prescribed in section 305(g) of the National Housing Act.

§ 200.99 Real Property Officer.

To the position of Real Property Officer and to each of them there is delegated the duties and functions as set forth in paragraphs (v) and (w) of § 200.95.

§ 200.100 Closing Clerk.

To the position of Closing Clerk and to each of them there is delegated the duty and function to execute in the name of the Commissioner, as authorized agent, mortgage insurance certificates under any home mortgage program and any other documents requiring the signature of the authorized agent incident to completion of the closing of the mortgage insurance transaction.

§ 200.103 Division Directors and their superiors; Field Office Directors, Deputies, and Assistants, and others.

To the position of Assistant Commissioner and Deputy Assistant Commissioner, Special Assistant and Deputy Special Assistant, Assistant to the Commissioner, Defense Coordinator, Division Director and Deputy Division Director, Field Office Director, Deputy Field Office Director, Assistant Field Office Director, there is delegated the duty and function to certify that official long distance telephone calls made were necessary in the interest of the Government, pursuant to 31 U.S.C. 680a (section 4 of the Act approved May 10, 1939, 53 Stat. 738).

§ 200.104 Classified Information Control Officer.

To the position of Classified Information Control Officer there is delegated the following duties and functions:

(a) To receive all classified information addressed to the Federal Housing Administration and to be responsible for the proper dissemination thereof.

(b) To safeguard all classified information in accordance with established security standards.

(c) To keep all officials of the FHA advised of security standards and requirements with respect to the safeguarding and dissemination of classified information.

§ 200.105 Personnel Security Officer and Deputy.

To the position of Personnel Security Officer and under his direction and supervision to the position of Deputy Security Officer there is delegated the following duties and functions:

(a) To be responsible for the establishment and administration of a security program in the Federal Housing Administration.

(b) To participate in conferences and discussions as the security representative of the FHA with officials of other government agencies for the purpose of making effective the National Personnel Security Program.

(c) To clear personnel of the FHA for sensitive positions.

(d) To evaluate security reports and to take final action in security cases of all types.

(e) To participate in proceedings before security hearing boards in any instance where an FHA employee is involved.

(f) To prepare reports and releases as required by the Attorney General and the Civil Service Commission in the administration of the FHA security program.

§ 200.106 Assistant Commissioner for Field Operations and Deputy; HUD Regional Administrators and Assistant Regional Administrators for FHA; Directors, Deputy Directors, Assistant Directors, Administrative Officers, Chief Clerks, and Service Office Supervisors in FHA Field Offices; and Assistant Commissioner for Administration and Deputy.

(a) To the Assistant Commissioner for Field Operations and Deputy; HUD Regional Administrators and Assistant Regional Administrators for FHA; Directors, Deputy Directors, Assistant Directors, Administrative Officers, Chief Clerks, and Service Office Supervisors in FHA

Field Offices; and the Assistant Commissioner for Administration and Deputy, pursuant to 5 U.S.C. 16a, there is delegated the authority to administer the oath required by section 1757, Revised Statutes, as amended (5 U.S.C. 16), incident to entrance into the executive branch of the Federal Government, or any other oath required by law in connection with employment therein, such oath to be administered without charge or fee and to have the same force and effects as oaths administered by officers having seals.

(b) The authority of this section covers the administration of Appointment Affidavits, Standard Form 61, and oaths to witnesses in any matter pending before the United States Civil Service Commission.

§ 200.107 National emergency.

To all Field Office Directors, Deputy Directors, Assistant Directors, and Chief Underwriters there is delegated, immediately upon declaration by the President of a national emergency or in event of an enemy attack, authority to designate certifying officers and to revoke such designations and to execute and submit to the Treasury Department necessary statements and schedules with respect thereto, pursuant to Public Law 389, approved December 29, 1941 (31 U.S.C. 82b–82e), and the standards and procedures of the Secretary of the Treasury thereunder. This authority shall be exercised only in the event the Commissioner is unable to act in his official capacity.

§ 200.108 Director Management and Operations Assistance Division and Deputy.

To the position of Director of the Management and Operations Assistance Division and under his general supervision to the position of Deputy Director of the Management and Operations Assistance Division, there is delegated the following basic authority and functions:

(a) To act for the Assistant Secretary-Commissioner in the following instances:

(1) In approving the settlement of tort claims for and against the Assistant Secretary-Commissioner.

(2) In approving the settlement of claims not exceeding $6,500 made by employees for damage or loss of personal property occurring incident to performing Government service.

(3) In executing releases or other instruments required in connection with the settlement of claims under subparagraphs (1) and (2) of this paragraph.

(b) [Reserved]

(c) To execute as Contracting Officer contracts for credit reports and to issue orders for publication of notices and advertisements in newspapers, magazines, and periodicals for securing such contracts.

(d) To approve for payment travel and other expenses incidental to the transfer of an employee to a new duty station, as provided in the Administrative Expenses Act.

§ 200.109 Regional Administrators, Deputy Regional Administrators, and the Assistant Regional Administrator, Region VIII (Denver), Housing Production and Mortgage Credit.

To the position of Regional Administrator, and to each of them, except the Regional Administrator, Region VII, and to the position of Assistant Regional Administrator for FHA, and to each of them under the general supervision of the appropriate Regional Administrator there is assigned authority as follows:

(a) To allocate below market interest rate funds to eligible section 221(d)(3) projects and to make reservations of contract authority for rent supplements and for interest assistance under section 236 of the National Housing Act and to modify or cancel such allocations and reservations.

(b) To approve or disapprove the eligibility of nonprofit sponsors and nonprofit mortgagors.

(c) To recommend to the Assistant Commissioner for Programs approval of applications for financial assistance and approval of waiver of repayment of loans made under section 207 of the Appalachian Regional Development Act of 1965, as amended.

(d) To approve or disapprove, following initial endorsement, increases in project mortgage amounts recommended or referred by FHA field offices.

The Regional Administrator, Region III, will exercise the authority assigned under this paragraph for the Puerto Rico jurisdiction.

(e) To approve or disapprove loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 and to make contracts and execute documents in connection therewith and, with respect to project applications filed under section 202 of the Housing Act of 1959 and converted to applications for mortgage insurance under section 236 of the National Housing Act, to determine feasibility under section 236, issue commitments for mortgage insurance under section 236, insure such mortgages pursuant to such commitments, including approval of insured advances during construction, and in connection with section 202 loans to be converted to insured mortgages under section 236, to assign and deliver such mortgages to the permanent lender.

(f) The duties and functions as set forth in § 200.118.

§ 200.110 Chief, Valuation Section, and Commitment Appraiser.

To the position of Chief, Valuation Section, in each HUD Area Office, and under his general supervision to the position of Commitment Appraiser, there is delegated the following basic authority and function: To approve conditional commitments to insure 1- to 4-family housing mortgages.

§ 200.111 Chief, Mortgage Credit Section, and Commitment Mortgage Credit Examiner.

To the position of Chief, Mortgage Credit Section, in each HUD Area Office, and under his general supervision to the position of Commitment Mortgage Credit Examiner, there is delegated the following basic authority and functions:

(a) To approve firm commitments for, and to make interest assistance payment contracts in conjunction with, the insuring of 1- to 4-family housing mortgages.

(b) To grant prior credit approval under the provisions of title I of the National Housing Act and regulations thereunder.

§ 200.112 Chief, Finance and Mortgage Credit Section.

To the position of Chief, Finance and Mortgage Credit Section, in each HUD Area Office, there is delegated the following basic authority and functions:

(a) To make interest assistance payment contracts.

(b) To make rent supplement contracts.

§ 200.113 Assistant Director for Technical Services.

To the position of Assistant Director for Technical Services in each HUD Area Office, there is delegated the following basic authority and functions:

(a) To direct underwriting processing for the insurance of mortgages in programs other than 1- to 4-family housing and establish and administer related processing target dates and construction starting dates, to approve preliminary underwriting determinations and recommend their acceptance for the insurance of mortgages in programs other than 1- to 4-family housing, to approve related construction advances and change orders, and to perform the functions and exercise the authorities as set forth in § 200.112.

(b) To approve schematic documents, architect's fees, findings (statutory room cost), final plans and specifications, construction contract awards, memoranda of acceptance for occupancy, dates of full availability, part I of certificates of completion, preliminary loan requisitions, development loan requisitions, administrative loan requisitions, actual development cost certifications, and all preliminary technical determinations, all as related to the production of low-rent public housing.

(c) To approve preliminary determinations underlying acceptance of applications, construction contract awards, acceptance of final inspections, and acceptance of certificates in lieu of audit or audit reports, all as related to the production of college housing.

§ 200.114 Assistant Director for Single Family Mortgage Insurance, and Deputy.

To the position of Assistant Director for Single Family Mortgage Insurance in each HUD Area Office and under his general supervision to the position of Deputy

there is delegated the following basic authority and functions:

(a) The duties and functions as set forth in §§ 200.110 and 200.111.

(b) To establish and administer 1- to 4-family housing mortgage insurance application processing target dates.

(c) To approve applications, subdivision reports, and construction changes related to the production of 1- to 4-family housing.

§ 200.115 Program Manager and Multifamily Housing Representative.

To the position of Program Manager in each HUD Area Office and under his general supervision to the position of Multifamily Housing Representative there is delegated the following basic authority and functions:

(a) To direct the participation in and support by those activities in the Area Office necessary to achieve required interprogram coordination in dealing with applications for (1) mortgage insurance in programs other than 1- to 4-family housing, (2) low-rent public housing, and (3) other subsidized housing projects.

(b) To approve findings of acceptability of proposals with respect to their completeness, compatibility with program policy, and, as applicable, the satisfaction of eligibility criteria, which findings adequately support his recommendations to the Director, Production Division, regarding processing priorities.

§ 200.116 Director, Production Division, and Deputy.

To the position of Director, Production Division, in each HUD Area Office and under his general supervision to the position of Deputy there is delegated the following basic authority and functions:

(a) To direct all activities essential to the insurance of mortgages, including the approval of determinations supporting feasibility letters, commitments and insurance endorsements, and the approval of cost certifications, eligibility statements, regulatory agreements, nonprofit sponsors and housing consultants, all as related to mortgages in programs other than one- to four-family housing; to establish and monitor adherence to related processing priorities and schedules, and to perform the functions and exercise the authorities set forth in §§ 200.113, 200.114, and 200.115.

(b) To approve preliminary loan contracts, site reports, development programs, Annual Contributions Contracts and amendments thereto and related third-party contracts, turnkey housing proposals, preliminary contracts of sale, contracts of sale, and agreements to lease, all as related to the production of low-rent public housing.

(c) To approve loan or grant agreements, financing plans (grants), loan disbursements, final inspections, and certificates in lieu of audit or audit reports, all as related to the production of college housing.

(d) To approve, cancel, or modify the reservations of contract authority required for subsidy payments, and the allocations of funds for Below Market Interest Rate Loans, all as related to the insuring of 1- to 4-family and multifamily housing mortgages.

§ 200.117 Director, Housing Services and Property Management Division, and Chief, Property Operations Branch.

To the position of Director, Housing Services and Property Management Division, in each HUD Area Office and under his general supervision to the position of Chief, Property Operations Branch, there is delegated the following basic authority and functions:

(a) To establish and administer surveillance of financial institutions regarding the servicing of 1- to 4-family housing mortgages essential to the prevention and cure of delinquencies as well as the avoidance of defaults, foreclosures, and acquisitions.

(b) To consent to the release of portions of mortgaged property from the lien of the mortgage.

(c) To approve mortgagee requests to obtain title by deed in lieu of foreclosure to property covered by an insured home mortgage.

(d) To assess late charges against delinquent mortgagors under Secretary-held home mortgages.

(e) To direct the affairs of mortgagor corporations when control has been assumed by the Secretary as preferred stockholder.

(f) To determine the need for and recommend initiation of action to acquire properties under defaulted Secretary-held home mortgages by foreclosure.

(g) To establish and administer the surveillance of financial institutions regarding the servicing of title I loans essential to the prevention and cure of delinquencies and the avoidance of defaults and litigation.

§ 200.118 Area Director and Deputy Area Director.

To the position of Area Director in each HUD Area Office and under his general supervision to the position of Deputy there is delegated the following basic authority and functions:

(a) To administer the activities of the Area Office for insuring mortgages within the assigned insuring jurisdiction, to administer the low-rent and other housing production activities of the Area Office, and to perform the functions and exercise the authorities set forth in §§ 200.116 and 200.117.

(b) To approve applications, feasibility letters, conditional commitments, firm commitments, initial and final endorsements for insurance pursuant to such commitments, project mortgage increases prior to or in conjunction with final endorsement, insurance fee refunds and adjustments pursuant to outstanding fiscal instructions, requests from sponsors for section 106 seed money loans or grants, and Appalachian 207 loans.

(c) To approve applications for program reservations and preliminary loans, to approve ACC (Annual Contributions Contract) Lists and amendments thereto, to approve part II of certificates of completion or consolidated certificates, and to terminate ACC's (Annual Contribution Contracts), all as related to the production of low-rent public housing.

(d) To approve reservations of funds for college housing.

Subpart E—Mortgage Insurance Procedures and Processing

§ 200.140 Scope of subpart.

This subpart is confined to general procedures and processing covering mortgage insurance irrespective of the particular program involved. More specific information regarding procedures and processing, including variances under the several titles and sections of the National Housing Act, are treated in other provisions of this chapter.

§ 200.141 Procedure in general.

All mortgage insurance programs involve four basic steps. First, applications for insurance; second, commitments for insurance; third, insurance endorsements; and fourth, claims for losses.

APPLICATION FOR INSURANCE

§ 200.142 Form and filing.

Any financial institution approved by the Commissioner as a mortgagee may apply for mortgage insurance. The application form may be obtained from any Federal Housing Administration field office. The application must be submitted to the office having jurisdiction over the area in which the property described in the application and offered as security is located.

§ 200.143 Purpose and content.

Every application, whether for insurance of a home type or project type mortgage, sets forth the required information to enable FHA to determine eligibility under a particular program. The eligibility consideration covers three general areas as follows:

(a) The eligibility of the proposed loan under the statute, i.e., term, interest rate, mortgage amount, and ratios of loan to value or replacement cost.

(b) The eligibility of the property with respect to compliance with FHA statutory and regulatory requirements.

(c) (1) The eligibility of the mortgagor with regard to the mortgagor's ability to carry and pay the proposed mortgage debt.

(2) Applications are designed to meet the requisites of the several programs. Accordingly, the applications will call for certain supplemental information, such as drawings and specifications, financial statements, exhibits and other information appropriate to enable the FHA to make the necessary determinations concerning eligibility.

§ 200.144 Fees.

Each application must be accompanied by a fee for examination in an amount in effect on the date the application is filed as indicated by the regulations covering the particular insurance program.

§ 200.145 Technical analysis and underwriting processing.

(a) When an application for mortgage insurance is received in the Field Office it is recorded and a receipt issued therefor. The proposed transaction is then analyzed to determine whether the application and supporting information is in proper form for underwriting processing.

(b) Underwriting processing involves consideration of the elements having to do with eligibility for insurance including review of the planning, construction, and specifications, cost estimation and valuation, and credit analysis. The findings are included in a report and recommendation which is the basis for the commitment.

§ 200.146 Acceptance, rejection and reconsideration.

(a) If an application for mortgage insurance meets the eligibility requirements a commitment for insurance is issued.

(b) If the application for mortgage insurance is not eligible for processing or does not qualify, this fact is reported to the applicant together with the reason for the rejection.

(c) A rejected application for mortgage insurance may be reconsidered upon written request to the Field Office which rejected the application.

COMMITMENT FOR INSURANCE

§ 200.147 Issuance of commitment.

After a determination that the mortgagor and the property offered for security meets the standards and requirements as to eligibility, a commitment is prepared and forwarded over the signature of the Authorized Agent to the approved mortgagee setting forth the terms and conditions under which the mortgage transaction will be insured. The commitment is a binding contract between the FHA and the mortgagee presenting the application.

§ 200.148 Types of commitments.

(a) *Home mortgages.* In connection with home mortgages the commitment issued may be conditional or firm.

(1) *Conditional commitment.* A conditional commitment is requested in a case where the mortgagor is unknown and therefore cannot be specified in the application. The Commissioner agrees to insure a mortgage on specified property in an amount and under the terms specified, provided the property is sold to a purchaser who is satisfactory to the FHA as a borrower.

(2) *Firm commitment.* A firm commitment is requested where the mortgagee desires insurance of a mortgage on specified property with a named mortgagor in an amount and on terms set forth in the commitment.

(b) *Project mortgages.* In connection with project mortgages the mortgagee may specify which of two types of commitments he desires.

(1) *Commitment for insurance of advances.* A commitment for insurance of advances specifies that the FHA will insure construction advances, subject to compliance with the commitment terms.

(2) *Commitment to insure upon completion.* A commitment to insure upon completion does not include construction advances, but provides that the FHA will insure the mortgage upon completion of the project subject to compliance with the commitment terms.

§ 200.149 Terms and conditions.

(a) The commitment sets forth the exact conditions under which the FHA will insure the mortgage loan. It indicates the maximum eligible term of years, the amount of such loan, the interest rate and the amount of the monthly installment, including principal and interest. In addition, in connection with proposed construction there may be provision for structural requirements and the number and type of inspections necessary. In the case of project mortgages, the commitment may indicate a schedule of advances which will be insured upon a finding that such advances are made in accordance with the commitment.

(b) A commitment is for a definite period of time and contains cancellation conditions which permit FHA to cancel the commitment in case of non-compliance with its terms. Upon full compliance with the terms of the commitment instrument, the FHA is legally bound to endorse the mortgage for insurance.

INSURANCE ENDORSEMENT

§ 200.150 Request for endorsement.

When all conditions of the commitment are fully met the commitment, together with all supporting documents such as the note, mortgage and any other exhibits as required by the terms of the commitment, are returned to the FHA by the mortgagee with request for endorsement for insurance.

§ 200.151 Final review.

Upon receipt of a request for endorsement the FHA makes a final review of the commitment and the supporting documents to determine that all are in proper order and that the terms and conditions have been fully performed.

§ 200.152 Endorsement for insurance.

When it has been determined that the terms and conditions of the commitment have been fully complied with, the FHA insures the mortgage and evidences the insurance by the Authorized Agent's signature in the endorsement panel on the mortgage note which is then returned to the mortgagee. After this endorsement the mortgagee is entitled to the benefits of insurance subject to compliance with the administrative regulations which are, in effect, a part of the insurance contract.

CLAIMS FOR LOSSES

§ 200.153 Presentation of claim.

In the event of a default of an insured mortgage the mortgagee presents a claim for insurance benefits. The application form for debentures and certificate of claim may be obtained from the Headquarters Office in Washington and is filed with the FHA Comptroller in Washington, D.C.

§ 200.154 Notice of default.

Upon default in a mortgage the mortgagee submits a notice of default status to the FHA Insuring Office having jurisdiction over the area wherein the mortgage security is located.

§ 200.155 Claim requirements.

To perfect its claim for payment the mortgagee is required either to assign the mortgage to the Commissioner or tender to him a good merchantable title to the property covered by the insured mortgage. In the home mortgage programs the mortgagee is required to foreclose the insured mortgage and obtain title to the property under a deed conveying good merchantable title. In project mortgage programs the foregoing procedure may be followed or the mortgagee has an alternative option to assign the project mortgage to the Commissioner. If the latter option is exercised the claim for insurance is reduced by one percent of the amount of the mortgage.

§ 200.156 Settlement of claims.

Upon approval of title conveyance thereof and delivery of possession of the property to the Commissioner, debentures and a certificate of claim are issued to the mortgagee in accordance with a computation provided by statute for the particular program. The debentures include an amount equal to the unpaid principal of the mortgage plus certain other items such as advances made for hazard insurance, payment of taxes, FHA mortgage insurance premium and a portion of foreclosure expenses. The terms of the statute strictly control the amounts which may be allowed in debentures. Certain expenditures made by the mortgagee, not allowed in the debentures, are included in the certificate of claim.

§ 200.157 Provisions and characteristics of debentures.

(a) *Series and fund.* Debentures are issued in appropriate series and are the obligation of and issued in the name of the particular mortgage insurance fund under which the mortgage is insured.

(b) *Registration, denomination and execution.* Debentures are issued in registered form and in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. Debentures are signed by the Federal Housing Commissioner by facsimile signature and imprinted with the seal of the Federal Housing Administration.

(c) *Rate of interest and interchangeability.* Debentures carry a rate of interest prescribed by the Commissioner but not in excess of an annual rate determined by the Secretary of the Treasury in accordance with a prescribed statutory formula involving yields or prices of outstanding marketable obligations of the United States. Debentures of the same series bearing the same

interest rate and having the same maturity date shall be freely interchangeable between the various authorized denominations.

(d) *Negotiability and redemption.* Debentures are negotiable and are fully guaranteed as to principal and interest by the United States. Debentures are redeemable on call issued by the Commissioner.

(e) *Payment of principal and interest.* Principal and interest of debentures shall be payable when due at the Treasury Department, Washington, D.C., or at any Government agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for that purpose. The principal and interest shall be payable to the registered owner whose name shall be inscribed on the debentures or to the assignee as shown by executed assignments.

(f) *Transfer and use*—(1) *In general.* Debentures are fully transferable and may be freely sold or assigned. They may be used by approved mortgagees in lieu of cash for payment of FHA mortgage insurance premiums.

(2) *Mutual Mortgage Insurance Fund debentures.* Debentures of the Mutual Mortgage Insurance Fund may be used to pay mortgage insurance premiums on mortgages insured under sections 203(b), 203(h), and 203(i), of the National Housing Act.

(3) *Cooperative Management Housing Insurance Fund debentures.* Debentures which are the obligation of the Cooperative Management Housing Insurance Fund may be used to pay premiums on mortgages and loans which are insured under that Fund. Where the insurance of a mortgage or loan is transferred from the General Insurance Fund to the Cooperative Management Housing Insurance Fund, or where a mortgage or loan is endorsed for insurance pursuant to a commitment transferred to the Cooperative Management Housing Insurance Fund, debentures issued in connection with such mortgage or loan may be used to pay insurance premiums of either the Cooperative Management Housing Insurance Fund or the General Insurance Fund.

(4) *General Insurance Fund and debentures of other funds.* Debentures of the General Insurance Fund and those debentures issued as obligations of mortgage insurance funds and accounts in existence prior to the enactment of the Housing and Urban Development Act of 1965 (other than the Mutual Mortgage Insurance Fund) which are transferred by the 1965 Act to the General Insurance Fund may be used to pay mortgage insurance premiums only on the following mortgages and loans:

(i) Those which are the obligation of the General Insurance Fund.

(ii) Those transferred from the General Insurance Fund to the Cooperative Management Housing Insurance Fund.

(iii) Those endorsed for insurance pursuant to commitments transferred to the Cooperative Management Housing Insurance Fund.

§ 200.158 Applicability of Treasury regulations to debenture transactions.

The United States Treasury Department is the agent for the Commissioner in connection with transactions and operations relating to debentures. The general regulations of the United States Treasury Department governing transactions and operations in United States registered bonds, and the payment of interest thereon, are adopted, so far as applicable, as the regulations of the Commissioner for similar transactions and operations in debentures, including the payment of interest on, with the following exceptions:

(a) *Payment of final interest on maturing or called debentures.* If the notice of maturity or call for redemption shall so provide, the final installment of interest payable on any debentures at maturity or earlier redemption date may be paid with the principal in accordance with the assignments on the debentures instead of by separate check drawn to the order of the registered payee and forwarded to him at his address of record.

(b) *Closing of transfer books.* If the call for redemption shall so provide, the books maintained by the Treasury Department may be closed against transfers and denominational exchanges in debentures for three full months preceding any interest payment date with respect to any debentures called for redemption on such interest payment date.

(c) *Detached assignments.* Detached assignments shall be recognized and accepted in any particular case in which the use of detached assignments is specifically authorized by the Treasury Department. Any assignment not made upon the debentures is considered a detached assignment.

(d) *Assignments by corporations for redemption for their own account.* A debenture registered in the name of, or assigned to, a corporation will be paid to such corporation, at maturity or earlier redemption date, upon an appropriate assignment for that purpose executed on behalf of the corporation by a duly authorized officer thereof. An assignment so executed and duly attested to in accordance with Treasury Department regulations will ordinarily be accepted without proof of the officer's authority. In all cases within this exception, payment will be made only by check drawn to the order of the corporation.

§ 200.159 Relief on account of lost, stolen, destroyed, mutilated or defaced debentures.

The statutes of the United States and the regulations of the Treasury Department governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to debentures, are adopted as the regulations of the Commissioner for the issuance of substitute debentures or the payment of lost, stolen, destroyed, mutilated or defaced debentures.

§ 200.160 Redemption of debentures prior to maturity.

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

§ 200.161 Administration of debenture transactions.

The Secretary of the Treasury or the Acting Secretary of the Treasury is authorized and empowered, on behalf of the Commissioner, to administer the regulations governing any transactions and operations in debentures, to do all things necessary to conduct such transactions and operations, and to delegate such authority at his discretion to other officers, employees, and agents of the United States Treasury Department. At his discretion the Secretary, the Under Secretary, or any Assistant Secretary of the Treasury acting by direction of the Secretary, is authorized to waive any such regulation on behalf of the Commissioner in any particular case where a similar regulation of the Treasury Department with respect to United States bonds or interest thereon would be waived.

§ 200.162 Certificates of claim.

The certificate of claim issued to the mortgagee at the time debentures are issued constitutes an agreement by the FHA that after the FHA has recovered its investment in a particular property any excess over and above such investment is available for payment on the certificate of claim. Certificates of claim bear interest at the rate of 3 percent per annum.

Subpart F—Property Improvement Loan Procedures and Processing

Loan Transaction

§ 200.165 Lender's application for insurance.

Any financial institution which has qualified as an approved lender may apply to the Federal Housing Administration for insurance against losses on account of personal loans made for alterations, repairs or improvements upon or in connection with existing structures which substantially protect or improve basic livability or utility as well as insurance against losses in connection with the building of new nonresidential farm

and non-farm structures. The maximum principal amount of such loans is set forth in section 2, Title I of the National Housing Act.

§ 200.166 Lending area.

(a) The Federal Housing Administration expects a qualified lender to confine its Property Improvement loan business to the trading area usually served by the institution in its normal operations. The lender must be in a position to investigate credits, make spot checks of the improvements being financed, and have its own employee or qualified representative make personal contact with delinquent borrowers.

(b) Prospective borrowers may obtain a list of qualified lenders in the particular area by writing to the Federal Housing Administration field office in the locality or to the Headquarters Office in Washington, D.C. Prescribed forms for use in connection with Property Improvement loans are made available by lenders.

§ 200.167 Credit investigation of borrower.

Property Improvement loans are primarily character loans, and the credit standing and credit instrument of the borrower are of primary importance. In accepting a contract of insurance the lender assumes the responsibility of applying sound principles in the evaluation of credit. The borrower applicant must furnish the lender with an executed credit application on a form approved by the Commissioner and disclosing information sufficient to satisfy the lender that the applicant represents an acceptable credit risk, including information that the loan is for the alteration, repair or improvement of property in which the borrower has an eligible interest as owner or lessee. The determination as to the eligibility of a loan for insurance and the approval of borrower's credit and all other details of the transaction are handled by the lender, without prior examination or approval of the transaction by the Federal Housing Administration, except as specifically required by the regulations.

§ 200.168 Other requirements for a Property Improvement loan.

The note or other evidence of the obligation taken by the insured must be valid and enforceable against the borrower and must be payable in installments. The borrower must have either a fee title, life estate, a purchaser's interest in a land contract, or a lease having a fixed term expiring not less than six calendar months after the maturity of the loan. The fee title or life estate may be subject to a mortgage or other lien. The regulations provide maximum maturity and maximum amounts for loans of various classes and sets forth maximum financing charges and certain items which are considered ineligible for loans.

§ 200.169 Direct borrower loans.

The Property Improvement loan may be initiated by a borrower who gives his credit application directly to a lender. The proceeds of a loan thus made are delivered directly to such borrower without the intervention or participation of a dealer or other intermediary.

§ 200.170 Loan through a dealer.

Also eligible as Property Improvement loans are dealer-originated cases where the dealer or contractor first obtains a credit application for the loan from the borrower and, after completing the work, has a note and completion certificate signed by the borrower. The dealer presents these documents to the lender and receives the proceeds of the loan, after the lender determines that the transaction is eligible for insurance. The Federal Housing Administration does not approve dealers for participation in the Property Improvement loan program. This is a responsibility of the lender which by investigation must determine that the dealer is reliable, financially responsible and qualified to perform satisfactorily the work to be financed and is equipped to extend proper service to the customer. The lender also makes the initial determination that the transaction is or is not insurable.

§ 200.171 Notice to borrower.

At least six calendar days prior to making disbursement to a dealer the lender is required to give the borrower written notice of the insured's intention to disburse the proceeds of the loan if the application is approved. Although the borrower need not acknowledge receipt of the notice the lender must have a record of having mailed or delivered such notice.

DISBURSEMENT

§ 200.172 Disbursement of proceeds to dealer.

In connection with all loans not made directly to the borrower, the lender must have investigated and approved the dealer and have in its possession, properly signed and dated:

(a) Completion certificate signed by borrower indicating work or materials have been satisfactorily completed or delivered by dealer.

(b) Copy of dealer's contract or sales agreement signed by borrower and dealer describing the type and extent of improvements to be made and the material to be used.

(c) Borrower's authorization certificate, if note is payable to lender.

§ 200.173 Disbursement of proceeds to borrower.

The lender may disburse the proceeds of the note directly to the borrower by cash, by check or money order drawn solely in favor of the borrower, or by crediting the borrower's account. In such transactions, the dealer does not participate in the disbursement in any manner and the borrower, has complete control of the funds at all times.

REPORT AND RESERVE

§ 200.174 Report of loans.

Within 31 days after the loan is made or the note is purchased from the dealer the lender submits to the Federal Housing Administration individual reports setting forth on a prescribed form the details of each transaction. This information, including the name of the borrower, the location of the property, the amount of loan advanced, the finance charges, the date of the note, and the terms of payment is the basis for computing the insurance premium which will be due and payable by the lender and is the official record of the transaction with the Administration. This report results in the automatic insurance of the loan as soon as the required insurance premium is paid.

§ 200.175 Insurance charge.

The regulations provide for an annual insurance charge based on a fractional percentage of the net proceeds of each loan reported for insurance. The lender is billed once a month on all loans reported for insurance during the previous period the receipt of which have been acknowledged by the Commissioner.

§ 200.176 Insurance reserves.

For each lender holding a contract of insurance, there is established by the Federal Housing Administration a general insurance reserve the amount of which is based upon the number of loans the institution reports for insurance during certain periods. For each eligible loan reported by a lender and accepted for insurance, 10 percent of the net proceeds of the loan is credited to the lenders' insurance reserve. The cumulative credits to the insurance reserve for each lender thus equals 10 percent of the net amount advanced by it on all eligible loans and affords insurance against losses on its overall lending operation.

CLAIMS FOR REIMBURSEMENT FOR LOSS

§ 200.177 Claims for payment.

Claim for reimbursement for loss on an eligible Property Improvement loan may be made to the Federal Housing Administrator by the lender after the borrower's default, provided demand has been made for the full unpaid balance of the note. The claim must be made within a prescribed period and be accompanied by the lender's complete credit and collection file for the transaction. The note and any security held or judgment taken must be duly assigned to the United States. An examination and audit of each claim is made to determine compliance with the provisions of the National Housing Act and the regulations.

§ 200.178 Amount of claim.

(a) After it has been determined that the loan and the lender's claim for loss are eligible, the lender is reimbursed by a United States Treasury check for 90 percent of the loss sustained on the defaulted obligation. In addition, the lender may be reimbursed as provided by the regulations for a certain proportion of attorney's fees and uncollected court costs arising out of efforts to collect the note.

(b) If the claim is disapproved the lender is notified of the basis of such

disapproval, with return to it of the insurance premium and all related papers and documents. Appeal for reconsideration of disapproval may be had by addressing a written request to Headquarters Office in Washington, D.C.

§ 200.179 Establishment of account.

The moneys derived from premium charges and all moneys collected as fees of any kind in connection with insurance of financial institutions, and all moneys derived from the sale, collection, disposition, or compromise of any debt, contract, claim, property or security assigned or held by the Commissioner are deposited in an account in the Treasury of the United States, which account is available for defraying the operating expenses of the Federal Housing Administration in connection with insurance of financial institutions and any amounts in such account which are not needed for such purpose are available for the payment of claims in connection with the insurance granted under the statute.

Subpart G—Official Records [Reserved]

Subpart H—Enforcement Remedies

REFUSAL OF PARTICIPATION

§ 200.190 Authority of Director.

Any official designated by the Commissioner as the Director of a Field Office is authorized to refuse the benefits of participation (either directly as a borrower, or indirectly as a builder, contractor, dealer, salesman, or sales agent for a builder, contractor or dealer) under title I, II, VI, VII, VIII, IX, X, or XI of the National Housing Act to any individual, firm, partnership, association, trust, or corporation, that the Director determines:

(a) Has knowingly or willfully violated any provision of the Act or any regulation issued thereunder, or any provision of Title III of the Servicemen's Readjustment Act of 1944, as amended, or of any regulation issued by the Administrator of Veterans' Affairs thereunder, or

(b) Has, in connection with any construction, alteration, repair or improvement work financed with assistance under the Act or Title III of the Servicemen's Readjustment Act of 1944, as amended, or in connection with contracts or financing relating to such work, violated any Federal or State penal statute, or

(c) Has failed materially to properly carry out contractual obligations with respect to the completion of construction, alteration, repair, or improvement work financed with assistance under the act or Title III of the Servicemen's Readjustment Act of 1944, as amended.

§ 200.191 Notice.

Before any determination is made to refuse any person or firm the benefits of participation, notice of the proposed determination in writing and signed by the Director shall be mailed to the last known address of the interested person or firm by registered mail, return receipt requested.

§ 200.192 Hearing, request.

Any person or firm that has been notified of a proposed determination is entitled to request an opportunity to be heard and to be represented by counsel. Any such request shall be made in writing addressed to the Director of the Office from which it was received. The letter to the Director may also include a request for written notice specifying charges in reasonable detail. The request for an opportunity to be heard shall be made within ten days from the date of receipt of notice of the proposed determination. If at the end of such ten-day period, no request has been received, the Director may assume that an opportunity to be heard is not desired, and may proceed in the manner provided in § 200.194 to notify the interested person or firm of his determination.

§ 200.193 Hearing, time and place.

Upon receipt of a request for an opportunity to be heard, the Director shall arrange a timely hearing. Notice of the time and place of such hearing shall be in writing, transmitted by registered mail, return receipt requested, and shall include a statement indicating the informal nature of the proceedings and their purpose.

§ 200.194 Determination.

After the person or firm against whom action is proposed has been afforded an opportunity to be heard, the Director shall make his determination on the preponderance of the evidence. The Director shall obtain the approval of the Commissioner before making a final determination withdrawing the approval of an approved mortgagee or terminating a lender's insurance contract under Title I of the Act. Notice of such determination shall be made in writing, signed by the Director, and transmitted by registered mail, return receipt requested. The Director's determination shall be final and conclusive.

§ 200.195 Rescission and reinstatement.

Any person or firm debarred from the benefits of participation may in writing request reinstatement. The procedures for reinstatement are substantially similar to those invoked in the initial proceedings. In reaching his determination regarding reinstatement the Director must be satisfied that the original wrongful act has been righted and also be persuaded from the assurances of the party concerned that he understands the requirements of the statutes and the administrative rules and regulations and that he will comply with them in the future. When a debarment has been rescinded a report thereof is forwarded to Headquarters Office in Washington, D.C., and the party reinstated receives a notice of such reinstatement.

UNSATISFACTORY RISK DETERMINATION

§ 200.200 Basis of action.

Any Field Office Director may reject an application for mortgage insurance on the grounds of unsound credit or unsatisfactory past experience. Applications will be rejected where past experience with the proposed borrower, builder or other participant in the mortgage transaction indicates that his previous conduct or method of doing business has been such that his participation in the transaction would make it unacceptable from the underwriting standpoint of an insurer. The Unsatisfactory Risk Determination action is usually temporary in nature and may be followed in aggravated cases by the application of section 512 procedures as set forth in § 200.190 et seq.

§ 200.201 Invitation to conference.

The purpose of the application of Unsatisfactory Risk Determination procedure is to obtain a correction of the conditions giving rise to the administrative action. Accordingly, a person against whom administrative action is being considered is usually extended an invitation to discuss the matter with the Director looking toward corrective action on the part of those involved. Such an invitation is not extended if action is taken during investigation or pending court proceedings.

§ 200.202 Determination notice.

When it is determined that a person is an unsatisfactory risk, the Director will notify such person by sending a registered letter to his last known address, stating the date on which such Unsatisfactory Risk Determination is effective, a brief informal statement of the reasons for the same, and the name of the individual firm, its officers and principal stockholders.

§ 200.203 Reinstatement.

Reinstatement of persons and firms whose applications or requests have been rejected under Unsatisfactory Risk Determination procedure is within the discretion of the Director. The Director may entertain any proposal whereby the persons or firms affected make arrangements which will correct the conditions leading to the original determination. The arrangements for corrective action include proper assurances of future compliance in specified matters and agreement to abide by all applicable FHA regulations. Satisfactory corrective action having been taken the Unsatisfactory Risk Determination is rescinded and withdrawn and the persons and firms are reinstated.

TITLE I PRECAUTIONARY MEASURES

§ 200.205 Basis of action.

In order to protect homeowners and to avoid increased insurance risks, the Field Office Director will assist lending institutions in their efforts to supervise and control the activities of dealers and salesmen originating mobile home and property improvement loans where there are involved irregularities or disregard for the statute and regulations. The Director will determine the corrective action appropriate in the circumstances.

§ 200.206 Inquiry notice and explanation.

Upon receipt of information indicating unscrupulous and unethical practices or other conduct that tends to unduly increase insurance risks on the part of a dealer or salesman, the Director will arrange for a prompt inquiry by a member of his staff. After the inquiry, the dealer or salesman is informally advised in writing of the proposed determination by the Director. The dealer or salesman may then request an opportunity to give his version of the surrounding circumstances and answer or explain any derogatory charges or allegations made in connection with his mobile home or property improvement loan operations.

§ 200.207 Determination.

When it has been determined that precautionary measures are to be instituted against a dealer or salesman the Director submits a recommendation to that effect to the Headquarters Office in Washington, D.C., for consideration. If the recommendation is approved the dealer, salesman, insured institution, lending institution and insuring offices will be so advised.

§ 200.208 Rescinding actions.

The Director may rescind precautionary measures actions if he has satisfied himself that the dealer or salesman can and will conduct his future operations in accordance with the letter and spirit of the Act and the Title I regulations. The Director will forward his recommendation regarding any rescission to Headquarters Office in Washington, D.C., which will mail the rescission letter to all who received the original precautionary letter.

Subpart I—Nondiscrimination and Fair Housing

§ 200.300 Nondiscrimination and fair housing policy.

The regulations in this subpart are prescribed pursuant to the provisions of Executive Order 11063, issued by the President under date of November 20, 1962, and title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968 prohibiting discrimination and providing for fair housing and directing the Secretary to administer Housing and Urban Development programs and activities in a manner affirmatively to further these policies.

§ 200.305 Notice to public.

Participants in insurance programs of the Federal Housing Administration shall be informed of the established policy on nondiscrimination and equal opportunity in housing and in group practice facilities through all appropriate means and as early as possible in their negotiations or upon indicating interest in the sponsorship or financing of housing, related facilities, and group practice facilities.

§ 200.310 Definition of "discriminatory practice".

As used in this subpart, the term "discriminatory practice" shall mean any discrimination because of race, color, creed, or national origin in lending practices or in the sale, rental, or other disposition of residential property or related facilities and group practice facilities, or in the use or occupancy thereof, if:

(a) Such property is or will be constructed, rehabilitated, purchased or financed with the proceeds of a loan or investment insured under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(b) Such property is offered for sale under terms which include financing under the provisions of the National Housing Act pursuant to an application for mortgage insurance received by the Commissioner after November 20, 1962; or

(c) Such property is improved with a loan reported for insurance under Title I of the National Housing Act, the proceeds of which are disbursed after November 20, 1962; or

(d) Such property is owned by the Federal Housing Administration.

§ 200.315 Prohibition against discriminatory practice.

No person, firm, or other entity receiving the benefits of Federal Housing Administration mortgage insurance or doing business with the Federal Housing Administration shall engage in a "discriminatory practice" as such term is defined in this subpart.

§ 200.320 Subdivision report and multifamily, land development, and group practice facilities preapplication analysis.

All requests for a subdivision report under home mortgage procedures or requests for preapplication analysis of multifamily, land development, and of group practice facilities projects, shall be accompanied by a statement of the applicant in which he agrees to comply with the regulations in this subpart. The statement shall be in a form satisfactory to the Commissioner.

§ 200.325 Corporate charters and regulatory agreements.

Corporate charters, regulatory agreements, and other instruments relating to multifamily, land development and group practice facilities projects, insured pursuant to applications received after November 20, 1962, under which the Commissioner exercises controls over rentals or methods of operation of mortgagors participating in the programs of the Federal Housing Administration shall contain provisions requiring compliance with the regulations in this subpart.

§ 200.335 Provisions in legal instruments.

Contracts and other instruments of the nature described in §§ 200.310 through 200.330 shall contain provisions to the effect that failure or refusal to comply with the regulations in this subpart shall be a proper basis for future rejection of applications and refusal by the Federal Housing Administration to enter into contracts with or insure loans involving persons, firms or other entities identified with such failure and refusal.

§ 200.340 Complaints and hearings.

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or other entity has engaged in a discriminatory practice, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Field Office Director or his designee having jurisdiction.

(b) If the existence of a discriminatory practice is denied by the person, firm or other entity against which a complaint has been made, the Field Office Director or his designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not engaged in a discriminatory practice, the parties concerned shall be so notified.

(d) If it is found that there has been a violation of the regulations in this subpart, the person, firm or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimination of the discriminatory practice. If such practice is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will not engage in such practices in the future, the parties concerned shall be so notified.

§ 200.345 Sanctions.

Failure or refusal to eliminate a discriminatory practice or to give satisfactory assurances of future compliance with the requirements of this subpart shall be proper basis for applying sanctions. In the case of discrimination involving lending practices, the sanction may include the withdrawal of the lender's approval as a mortgagee. In other cases the sanctions may take the form of placing the offender's name on an ineligible list. Applications for mortgage insurance shall be rejected as ineligible if any person, firm or other entity included on the ineligible list is identified in any manner with the proposed transaction.

§ 200.350 Appeals from findings of Field Office Directors.

Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed under the regulations may apply to the Commissioner for a rehearing or a readjudication of the action taken by the Field Office Director. Upon receiving such application, the Commissioner may designate a representative to conduct a hearing and to make a report of findings. The Commissioner may, after a

review of the record on appeal, reverse an action taken by the Field Office Director.

§ 200.355 Reinstatement.

Reinstatement of restricted persons, firms or other entities shall be within the discretion of the Commissioner and under such conditions as he may prescribe.

Subpart J—Equal Employment Opportunity

§ 200.400 Purpose.

The purpose of this subpart is to assist in achieving the aims of Part III of Executive Order 11246 and the relevant regulations of the Secretary of Labor and the Secretary of Housing and Urban Development.

§ 200.405 Notice to public.

Participants in insurance programs under the National Housing Act shall be informed, as early as possible upon indicating their interest in any such program, of the established policy of nondiscrimination in employment in construction, repair or rehabilitation work financed with assistance under the Act.

§ 200.410 Definition of term "applicant".

(a) In any mortgage or loan insurance transaction under this chapter where the Commissioner will control the mortgagor either through the ownership of corporate stock or under the provisions of a regulatory agreement, the term "applicant" as used in § 200.415 shall mean the mortgagor.

(b) In any transaction other than one specified in paragraph (a) of this section, the term "applicant" as used in § 200.415 shall mean the developer, or the builder, dealer or contractor performing the construction, repair or rehabilitation work for the property owner.

§ 200.415 Agreement of applicant.

An applicant shall, prior to the Commissioner's issuance of any commitment or other loan approval, agree (in a form prescribed by the Commissioner) that there shall be no discrimination against anyone who is employed in carrying out work receiving assistance pursuant to this chapter, or against an applicant for such employment, because of race, color, religion, sex or national origin.

§ 200.420 Equal opportunity clause to be included in contracts and subcontracts.

(a) The equal opportunity clause prescribed by the Commissioner pursuant to the regulations of the Secretary of Labor (41 CFR Ch. 60) shall be included in each nonexempt contract and subcontract for work receiving FHA assistance.

(b) Subcontracts less than $50,000 may incorporate by reference the equal opportunity clause.

(c) The equal opportunity clause shall be deemed to be a part of each nonexempt contract or subcontract whether or not it is physically incorporated in such contract.

§ 200.425 Exemptions.

(a) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000 are exempt from the requirements of the equal opportunity clause. No contractor or subcontractor shall procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(b) *Contracts and subcontracts for indefinite quantities.* Contracts and subcontracts for indefinite quantities are exempt from the requirements of the equal opportunity clause if the amount to be ordered in a single year under any such contract will not exceed $10,000.

(c) *Work outside the United States.* Contracts and subcontracts with regard to work performed outside the United States by employees who were not recruited within the United States are exempt from the requirements of the equal opportunity clause.

(d) *Others.* Other exemptions set forth in the regulations of the Secretary of Labor at 41 CFR 60–1.5 apply to transactions under this subpart.

§ 200.430 Sanctions.

Failure or refusal to comply and give satisfactory assurances of future compliance with the requirements of this subpart shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246 and the relevant regulations of the Secretary of Labor.

Subpart K—Correction of Structural Defects

§ 200.500 Purpose.

The purpose of this subpart is to specify the terms, conditions and types of assistance that the Federal Housing Administration will render to an eligible mortgagor who has been unable to secure satisfactory reconstruction or replacement of structural defects in his property.

§ 200.502 Application for assistance.

An application for assistance in the correction of structural defects, in form satisfactory to the Commissioner, shall be filed by a mortgagor under an FHA-insured mortgage with the Field Office Director having jurisdiction over the area in which the property is located. The application shall be filed not later than four years after the date of the first mortgage insurance certificate issued in connection with the property. A mortgagor under a new FHA mortgage on the same property shall be entitled to file an application if it is filed within the same four-year period following the date of the first insured mortgage certificate.

§ 200.505 Nature of defect.

Assistance in the correction of structural defects shall be available only in connection with a structural defect in the property which the Commissioner has determined to be of such a nature as to seriously affect the livability of the property. Such assistance shall not be available where the defect occurs as a result of fire, earthquake, flood, tornado, or waste.

§ 200.507 Eligibility requirements.

To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:

(a) He is the owner of a one- to four-family dwelling covered by an individual mortgage that was insured by the Commissioner after September 2, 1964.

(b) The dwelling was approved for mortgage insurance prior to the beginning of construction and was inspected by the Commissioner or by the Veterans Administration.

(c) He has made reasonable efforts to obtain a correction of a structural defect in his property by the builder, seller, or other persons, and that the defect has not been corrected.

§ 200.510 Type of assistance.

The type of assistance in the correction of structural defects to be rendered a mortgagor who establishes eligibility shall be determined by the Commissioner. In those cases where the Commissioner determines it is appropriate and necessary, he may take any of the actions as follows:

(a) Pay expenses in connection with having the defect corrected.

(b) Pay the claim of the mortgagor for corrected damages to the property arising out of such defect.

(c) Acquire title to the property with the approval of the mortgagor and under such terms and conditions as are satisfactory to the mortgagor.

§ 200.512 Subrogation by mortgagor.

Where the Commissioner has taken action as provided in § 200.510, any legal rights the mortgagor may have against the builder, seller, or other persons, arising out of the defect in his property shall be assigned and set over to the Commissioner.

§ 200.515 Right and finality of determination.

The mortgagor shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this subpart. Any determination made by the Commissioner in connection with a mortgagor's application for assistance shall be final and conclusive and shall not be subject to judicial review.

Subpart L—Correction of Structural or Other Defects in Homes Covered by Mortgage Insurance Under Section 235

AUTHORITY: The provisions of this Subpart L issued under sec. 518 (b) and (c), 78 Stat. 783, 84 Stat. 1771; 12 U.S.C. 1735b.

§ 200.517 Purpose.

The purpose of this subpart is to specify the terms and conditions under which the Secretary will consider affording assistance to mortgagors under section 518(b) of the National Housing Act

(added by section 104 of the Housing and Urban Development Act of 1970).

§ 200.520 Application for assistance.

An application for assistance in the correction of defects, in a form satisfactory to the Secretary, shall be filed by or on behalf of an eligible mortgagor with the Area or Insuring Office Director having jurisdiction over the area in which the property is located. The application shall be filed not later than 1 year after the insurance of the mortgage, or, in the case of a dwelling covered by a mortgage which has insured prior to December 31, 1970, not later than December 31, 1971.

§ 200.522 Eligibility for consideration.

The Secretary will consider a mortgagor eligible for assistance under this subpart if the Secretary finds that each of the following requirements is fulfilled:

(a) The person applying for assistance is the owner and mortgagor of a single-family dwelling covered by a mortgage insured under section 235 of the National Housing Act pursuant to a mortgage insurance commitment issued when such dwelling was more than 1 year old;

(b) One or more structural or other defects existed in such dwelling on the date of the issuance of the mortgage insurance commitment which (1) were sufficient to seriously affect the use and livability of such dwelling, and (2) were of such a nature that a proper inspection could reasonably be expected to have disclosed them; and

(c) The application for assistance was filed in accordance with the provisions of this subpart.

§ 200.527 Consideration for assistance.

Upon a finding by the Secretary that a mortgagor is eligible to be considered for assistance under this subpart, the Secretary will, in his sole discretion, determine whether to afford assistance hereunder by direct expenditures to correct defects as defined in § 200.522(b), compensation of a mortgagor who has made such expenditures himself, or a combination of both direct expenditures and compensation of the mortgagor. The Secretary, in determining whether to afford assistance, the amount thereof, its form, and when it will be afforded, will consider:

(a) The extent to which the defects represent a clear and present danger to the health and safety of the occupants;

(b) The availability of funds from which the Secretary is authorized to make expenditures hereunder; and

(c) Such other matters as he deems material.

§ 200.533 Right and finality of determination.

All decisions of the Secretary with respect to assistance under this subpart are final and conclusive and not subject to judicial review.

Subparts M–Q [Reserved]

Subpart R—Claims Collection Standards

§ 200.900 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR 101 et seq.). These standards are applicable to the administrative claim collection activities of the Commissioner except as modified by the provisions of § 200.905. (Also, see 24 CFR Part 17, Subpart B, for Department collection regulations.)

§ 200.905 Collection of title I accounts.

Where, in connection with a title I claim assigned to the United States of America pursuant to § 201.11 of this chapter, collection is made under a payment plan providing for regular installment payments, amounts received shall not be applied according to the so-called "U.S. Rule" as prescribed in § 102.10 of the joint regulations of the General Accounting Office and the Department of Justice (4 CFR 102.10). In such instances, amounts received shall be applied first to satisfy the principal of the debt. Subsequent payments shall be applied to the interest obligation, calculated on the basis of declining principal balances without charging interest on interest balances.

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

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AUTHORITY: The provisions of this Part 201 issued under sec. 2, 48 Stat. 1246, as amended; 12 U.S.C. 1703.

Subpart A—Property Improvement Loans

§ 201.1 Definitions.

As used in the regulations in this part, the term:

(a) "Act" means the National Housing Act, as amended.

(b) "Administration" means the Federal Housing Administration.

(c) "Commissioner" means the Federal Housing Commissioner or his duly authorized representative.

(d) "Contract of Insurance" includes all of the provisions of the regulations in this part and of the applicable provisions of the Act.

(e) "Insured" means a financial institution holding a Contract of Insurance under Title I of the act.

(f) "Loan" means an advance of funds or credit or the purchase of an obligation evidenced by a note.

(f–1) "Direct loan" means a loan applied for by and disbursed directly to the borrower or borrowers where:

(1) The credit application, signed by the borrower or borrowers, is filled out by:

(i) The borrower or borrowers; or

(ii) A maker of the note other than a borrower; or

(iii) A person acting at the direction of a borrower who has no financial interest, directly or indirectly, in the contract for the repair, alteration or improvement of the borrower's property; and

(2) The proceeds are delivered directly to such borrower or borrowers without the intervention or participation of an intermediary in any manner in such disbursement other than a maker of the note.

(f-2) "Dealer loan" means a loan where an intermediary, having a financial interest in the contract for the repair, alteration, or improvement of the borrower's property, intervenes or participates in the application for or disbursement of the loan.

(g) "Note" includes a note, bond, mortgage, or other evidence of indebtedness.

(h) "Payment" includes a deposit to an account or fund which represents the full or partial repayment of a loan.

(i) "Borrower" means one who applies for and receives a loan in reliance upon the provisions of the Act and who has an interest of at least one-third in one of the following types of ownership in the property to be improved:

(1) A fee title, or

(2) A life estate, or

(3) A fee title or life estate subject to a mortgage, deed of trust, or other lien securing a debt, or

(4) A mutually binding contract for the purchase of the property where the borrower is rightfully in possession and the purchase price is payable in installments.

(5) A lease having a fixed term, expiring not less than six calendar months after the maturity of the loan, provided the lessor indicates in writing his consent to the making of the improvements and procurement of the loan.

The borrower or borrowers shall have at least one-third of one of such interests in the property to be improved.

(j) "Class 1(a) loan" means a loan, other than a loan defined in paragraph (k) of this section as a "Class 1(b) loan," which is for the purpose of financing the repair, alteration, or improvement of an existing structure or of the real property in connection therewith, exclusive of the building of new structures.

(k) "Class 1(b) loan" means a loan is made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families which structure is not owned by a corporation.

(l) "Class 2(a) loan" means a loan which is for the purpose of financing the construction of a new structure which is to be used exclusively for other than residential or agricultural purposes: *Provided,* That nothing in this paragraph shall prevent the temporary use of such a structure for residential purposes while the borrower constructs a new dwelling to replace a previous dwelling, which he occupied as an owner or a tenant, which was destroyed or damaged to such an extent that reconstruction is required as a result of a flood, fire, earthquake, storm or other catastrophe which the President, pursuant to section 2(a) of Public Law 875, approved September 30, 1950, has determined to be a major disaster and the Credit Application is filed within one year from the date of such determination.

(m) "Class 2(b) loan" means a loan which is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes, exclusive of residential purposes.

(n) "Class 1 loan" includes both "Class 1(a)" and "Class 1(b)" loans as defined in paragraphs (j) and (k) of this section.

(o) "Class 2 loan" includes both "Class 2(a)" and "Class 2(b)" loans as defined in paragraphs (l) and (m) of this section.

(p) "Existing structure" means a residential structure completed and occupied at least 90 days prior to the application for the Title I loan or a structure for other than residential purposes which was a completed building with a distinctive functional use prior to the application for the Title I loan: *Provided,* That the requirement with respect to the period of occupancy and completion of a new residential structure shall not apply to:

(1) Loans having a principal amount, exclusive of financing charges, of $600 or less.

(2) Residential structures which have been damaged in a disaster which the President, pursuant to section 2(a) of Public Law 875, approved September 30, 1950, has determined to be a major disaster.

(3) Loans which are for the purpose of financing the construction of civil defense shelters.

§ 201.2 Eligible notes.

(a) *Validity.* The note shall bear the genuine signature of the borrower as maker, shall be valid and enforceable against the borrower or borrowers as defined in § 201.1(i), and shall be complete and regular on its face. The signatures of all parties to the note must be genuine. If the note is executed for and on behalf of a corporation or in a representative capacity, the note must create a binding obligation of the principal.

(b) *Acceleration clause.* The note shall contain a provision for acceleration of maturity, either automatic or at the option of the holder, in the event of default in the payment of any installment upon the due date thereof.

(c) *Payments.* (1) The note shall be payable in equal installments falling due monthly or every 2 weeks, unless a different payment schedule is approved by the Commissioner. The first payment shall be due no later than 2 months from the date of the note. The note may provide for a first or final payment in an amount other than the regular installment. In such instance, the installment shall not be less than one-half nor more than one and one-half times the amount of the regular installment.

(2) Where 51 percent or more of the borrower's income is derived from the raising and selling of agricultural commodities, crops, livestock, or from commercial fishing or the operation of a commercial greenhouse, a note may be made payable in installments corresponding to income periods shown on the credit application. In such instances, the note shall provide for the first payment no later than 1 year from the date of the note with subsequent payments to be made at least once a year. The proportion of principal payable during the last half of the term of the loan shall not exceed the proportion to be paid during the first half of the term.

(d) *Maturity*—(1) *Minimum.* The note shall not have a final maturity of less than 6 calendar months from the date of the note.

(2) *Maximum.* The maximum permissible maturity of a note evidencing:

(i) A Class 1(a), 1(b), or 2(a) loan is 7 years and 32 days from the date of the note.

(ii) A Class 2(b) loan is 7 years and 32 days from the date of the note, except that if a Class 2(b) loan is secured by a first mortgage, first deed of trust, or other security instrument constituting a first lien upon the improved property, the loan may have a final maturity not in excess of 15 years and 32 days from the date of the note.

(iii) A combination of any of the above classes of loans shall be no greater than the maximum maturity governing that component part of the loan having the shortest maturity if made alone.

(e) *Late charges.* The note may provide for a late charge, not to exceed 5 cents for each $1.00 of each installment more than 10 days in arrears. No late charge on a past due installment may be accrued in excess of $5.00. In lieu of late charges, notes may provide for interest on past due installments at a rate not in excess of the contract rate in the jurisdiction in which the note is drawn. The borrower must be billed for the penalties collected as such, and evidence of such billing must be in the file if claim is made under the Contract of Insurance.

(f) *Secured notes.* A Class 1(b) loan in excess of $5,000, exclusive of financing charges, shall be secured by a recorded lien upon the improved property.

§ 201.3 Maximum amount of loans.

(a) *Class 1(a) loan.* A Class 1(a) loan shall not involve a principal amount, exclusive of financing charges, in excess of $5,000.

(b) *Class 1(b) loan.* A Class 1(b) loan shall not involve a principal amount, exclusive of financing charges, in excess of $2,500 per dwelling unit in the improved structure and shall not exceed $15,000.

(c) *Class 2 loans.* A Class 2 loan shall not involve a principal amount, exclusive of financing charges, in excess of $5,000.

(d) *Outstanding aggregate loan balance.* No loan shall be made which will result in an outstanding aggregate loan balance with respect to the same property or structure exceeding the dollar amount limitation prescribed in this section for the type of loan involved. If more than one type or class of loan is involved, the total outstanding aggregate loan balance as to one structure or property shall not exceed the dollar amount limitation prescribed in this section for the type or class of loan having the larger permissible maximum amount.

§ 201.4 Financing charges.

(a) *Maximum charge.* The maximum permissible financing charges, exclusive of fees and charges as provided by paragraph (b) of this section which may be paid or collected for interest, discount, and fees of all kinds in connection with the transaction, shall be computed as follows:

(1) Class 1 and Class 2 loans, having a principal amount, exclusive of financing charges, not in excess of $2,500 and having a maturity not in excess of 7 years and 32 days, may have a financing charge not in excess of an amount equivalent to $5.50 discount per $100 original face amount of a 1 year note, to be paid in equal monthly installments, calculated from the date of the note.

(2) Class 1 and Class 2 loans, having a principal amount, exclusive of financing charges, in excess of $2,500 and a maturity not in excess of 7 years and 32 days, may have a financing charge equivalent to the total of (i) an amount, with respect to so much of the net loan proceeds as does not exceed $2,500, equivalent to $5.50 discount per $100 original face amount of a 1 year note payable in equal monthly installments, plus (ii) an amount, with respect to any portion of the net loan proceeds in excess of $2,500, equivalent to $4.50 discount per $100 original face amount of a 1 year note to be paid in equal monthly installments, calculated from the date of the note.

(3) Class 2(b) loans, having a maturity in excess of 7 years and 32 days, shall not have a financing charge in excess of an amount equivalent to $3.50 discount per $100 original face amount of a one year note, to be paid in equal monthly installments, calculated from the date of the note.

(4) Such charges correctly based on tables of calculations issued by the Federal Housing Commissioner are deemed to comply with this section. An increase in the ratio of the charge to the average amount outstanding on the debt over the maximum provided in this section, which increase results from the first payment falling due less than 30 days after the date of the note, shall not be deemed to be in conflict with this section.

(b) *Permissible additional charges.* If the insured takes security in the nature of a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or other security device for the purpose of securing the payment of eligible loans, the insured may collect from the borrower, in addition to the maximum permissible financing charge as provided in paragraph (a) of this section, the following expenses actually incurred by the insured in connection with the transaction: Recording or filing fees, documentary stamp taxes, title examination charges and hazard insurance premiums, provided that such costs or expenses are not paid from the proceeds of the loan or included in the face amount of the note. Such costs or expenses shall not be included by the insured as a portion of a claim under the Contract of Insurance and if such costs or expenses are assessed against the borrower, proper evidence thereof shall be in the file.

(c) *Dealer reserve accounts and guarantees.* Reserve accounts to assure against losses on loans reported to the Commissioner for insurance are prohibited. A dealer or other person may be required to endorse or guarantee payment of notes so long as no reserve account is involved, but any such guarantee must cover the full amount due on the note. The provisions of this paragraph shall not be interpreted to apply to agreements between insureds as to the transfer of loans already reported for insurance.

(d) *Repayment rebate.* If a note is paid in full prior to maturity, the insured shall rebate the full unearned charge, except that where the law of the jurisdiction permits an acquisition or minimum retained charge, such charge may be deducted from the rebate. An insured is not required to make rebates of less than $1 except upon application of the borrower.

§ 201.5 Credits and collections.

(a) *Credit application.* Prior to making a loan the insured shall obtain a dated credit application executed by the borrower on a form approved by the Commissioner. A separate credit application is required for each loan made or note purchased. In addition, the loan file shall contain either a commercial credit report on the borrower or evidence of the lender's investigation of the borrower's credit.

(b) *Credit investigation.* The credit information relied upon by the insured, must, in its judgment clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, the eligibility of the note for insurance will not be affected. However, the insured shall promptly report such discovery to the Commissioner.

(c) *Outstanding FHA and direct Federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than 15 days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government, provided that nothing contained herein shall prevent the making of a loan otherwise eligible, even though the borrower is in default under such an obligation by reason of his military service and the approval of the Commissioner is obtained.

(d) *Past due Title I notes at time of purchase.* A note shall not be purchased when any installment thereon is past due more than 15 days at the date of purchase except purchases of notes under the provisions of § 201.12.

(e) *Prior approval by Commissioner.* In connection with all Class 1 and Class 2 loans, the approval of the Commissioner is required prior to disbursing any loan which will increase the total obligation of a borrower, or of a comaker or cosigner of the note, to more than $5,000 exclusive of financing charges.

(f) *Security.* The taking of security to secure the payment of a loan is left to the discretion of the insured lender unless specifically required by the Commissioner in accordance with the provisions of paragraph (e) of this section or of § 201.2(d)(2)(iii) or (f). An insured may permit the substitution or subordination of security, provided it can be shown when claim is made that at the time of such action the original security value was not impaired or reduced by such action. Upon presentation of the facts, the prior approval of the Commissioner may be obtained by the insured to any proposed substitution or subordination of security. A pledge of a share account, deposit or passbook, shall not be considered security within the meaning of this paragraph.

(g) *Collections.* The insured is required to service loans in accordance with acceptable practices of prudent lending institutions. In the event of default, the insured should have adequate facilities for contacting the borrower and otherwise exercise diligence in collecting the amount due. The insured is responsible to the Commissioner for proper collection efforts even though actual collection may be performed by an agent.

(h) *When owner must sign note.* When a borrower is a lessee of property to be improved, which is used or to be used for other than residential or agricultural purposes, the owner of the property shall join in the execution of the note unless the prior credit approval of the Commissioner is obtained.

§ 201.6 Eligible loans.

(a) *Property location.* The property to be improved shall be located within the United States, its territories, or possessions.

(b) *Use of proceeds—in general.* The proceeds of a loan shall be used only to finance alterations, repairs, and improvements upon real property or in connection with existing structures which substantially protect or improve the basic livability or utility of the property, and which are commenced in reliance upon the credit facilities afforded by Title I of the Act.

(c) *Use of proceeds—technical services and direct costs.* The proceeds of a loan may be used to pay:

(1) The costs of credit investigation, not to exceed $5.

(2) The costs of architectural and engineering services and the costs of obtaining building permits where such services or permits are directly connected with eligible alterations, repairs or improvements financed in accordance with the regulations in this part.

(d) *Use of proceeds—"built-in" kitchens.* Any part of the proceeds of a loan may be used for appliances to be installed in a kitchen provided that:

(1) The appliances are designed by the manufacturer to be installed in a kitchen as a "built-in" unit, and

(2) The appliances will be in fact installed and permanently affixed in the kitchen so as to become a permanent part of the real estate, and

(3) [Reserved]

(4) [Reserved]

(5) Individuals whose interest in the property to be improved is derived under a lease shall not be considered eligible borrowers unless the lease has an original term of not less than 99 years which is renewable, and

(6) Prior to disbursing the proceeds, the insured obtains on forms approved by the Commissioner:

(i) A certification signed by the borrower, stating that he or it is the owner of the residential structure to be improved or a lessee under a lease which has an original term of not less than 99 years and is renewable, and that it is his or its intention to build in, install and affix permanently in the kitchen of such residential structure the appliances purchased with the loan so that they will become an integral part of the real estate, and

(ii) An additional certification signed by the dealer, where the provisions of § 201.8(a) are applicable, or the prior approval of the Commission is required under § 201.5(e), stating that the appliances which are being financed by the Title I loan were designed by the manufacturer to be built in and that they have been permanently built in, installed and affixed in the borrower's kitchen or kitchens so as to become an integral part of the realty. In the case of a direct loan, such additional certification shall be signed by the borrower's contractor, and

(iii) A special certification signed by the borrower and the dealer, or by the borrower's contractor if the loan is made directly to the borrower, where two or more kitchens are to be installed, stating that the improvements, installations, alterations and repairs to the kitchens are in conformance with all applicable building codes and zoning regulations.

(7) Nothing in this paragraph will be construed as limiting the financing of household appliances or equipment considered eligible prior to October 20, 1959.

(e) *Use of proceeds—shelters.* (1) Before disbursing the proceeds of a loan to finance the construction of a civil defense shelter:

(i) The lender shall obtain a Statement of Eligibility issued by the Commissioner indicating that the proposed shelter is eligible for financing as a Title I Property Improvement Loan.

(ii) The shelter shall be inspected to determine that it is constructed in substantial conformance with the plans and specifications used by the Commissioner as a basis for issuing the Statement of Eligibility.

(2) The lender shall certify that the shelter is constructed in substantial conformance with the plans and specifications.

(3) The provisions of subparagraphs (1) (ii) and (2) of this paragraph shall not become effective until December 15, 1961.

(f) *Use of proceeds—septic tanks.* Before disbursing the proceeds of a loan to finance the construction or installation of a septic tank, the insured shall obtain a certification signed by the borrower and the dealer (or by the borrower and the borrower's contractor) certifying as to each of the following:

(1) That the septic tank and the sanitary system of which it is a part is in conformance with all applicable State and local sanitary and zoning regulations.

(2) That connection to a public or privately owned community sewerage system is not economically feasible.

(g) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of facts made by the borrower, which are called for by the borrower's credit application, in determining the eligibility of the loan.

§ 201.7 Ineligible loans.

(a) *In general.* There is hereby established a "list of ineligible items" which includes items, products, alterations, repairs, or improvements, or classes thereof, which the commissioner has determined not to be eligible for financing with the proceeds of loans reported for insurance under the regulations in this part. The omission of any item from the "list of ineligible items" shall not be construed as rendering such omitted item eligible for financing. All items otherwise ineligible for Title I financing shall remain ineligible for such financing notwithstanding any provision of this section. If an insured has any doubt as to the eligibility of any item, product, alteration, repair, or improvement, or class thereof, it should request a specific ruling from the Commissioner before making any loan.

(b) *List of ineligible items.* No part of the proceeds of a loan shall be used to finance any of the following items:

Barbecue pits.
Bathhouses.
Burglar alarms.
Burglar protection bars.
Dumbwaiters.
Fire alarms or fire detecting devices.
Fire extinguishers.
Flower boxes.
Greenhouses (except commercial greenhouses).
Hangars (airplane).
Kennels.
Kitchen appliances which are designed and manufactured to be freestanding and are not built in and permanently affixed as an integral part of the kitchen in a residential structure.
Outdoor fireplaces or hearths.
Penthouses.
Photo murals.
Radiator covers or enclosures.
Stands.
Steam cleaning of exterior surfaces.
Swimming pools.
Television antennae.
Tennis courts.
Tree surgery.
Valance or cornice boards. Waterproofing of a structure by pumping or injecting any substance in the earth adjacent to or beneath the basement or foundation or floors.

(c) *Supplementing an uninsured obligation.* The proceeds of an insured loan shall not be used to supplement an uninsured obligation of the borrower, created in connection with the proposed alterations, repairs, or improvements, if the payment of the uninsured obligation is secured by a lien unless the insured loan is to be secured by a lien which has priority.

§ 201.8 Dealer investigation, approval and control.

(a) *Procedure before disbursement.* Before disbursing the proceeds of a loan, the insured shall:

(1) Have approved as dealer an applicant who the insured considers to be reliable, financially responsible and qualified to perform satisfactorily the work to be financed, and to extend proper services to the customer. This approval shall be evidenced by an application, on a form approved by the Commissioner, dated and signed by the insured to signify such approval. The insured shall maintain a file for each dealer in which shall be included the dealer application, as approved by the insured, with the credit reports and any other information obtained to support the dealer's application. Records of inspections of the dealer's work and memoranda relating to the insured's experience with loans originated by the dealer shall also be maintained in the dealer file. Except where the dealer engages exclusively in the sale of materials, the insured shall make an inspection of the work performed by the dealer and shall interview the borrower. These inspections and interviews shall be conducted in connection with the first contract performed by the dealer and with respect to not less than one out of every five contracts of the dealer involving net proceeds in excess of $3,500.

(2) *Completion certificate.* Obtain a completion certificate on a form approved by the Commissioner, signed by the borrower and by the person approved by the insured as dealer. An insured shall not disburse the proceeds of a loan if, as an inducement for the consummation of the transaction, the borrower has been given or promised a cash payment or rebate, or it has been represented to the borrower that he will receive a cash bonus or commission on future sales. In the absence of information to the contrary, the insured may rely upon the dealer's statement in his completion certificate that there has been no such cash payment, rebate, bonus or commission. If there are two or more eligible borrowers involved in a transaction, the signature of only one borrower is required on the borrower's certificate.

(3) *Authorization to pay loan proceeds.* (i) If the application for the loan is dated before February 1, 1964: Obtain written authorization from the borrower, where the insured is the payee of the note and the proceeds are to be disbursed to one other than the borrower.

(ii) If the application for the loan is dated on or after February 1, 1964: Obtain written authorization from all borrowers and all makers and co-signers, where the insured is the payee of the note and the proceeds are to be disbursed to one other than the borrower. All signatures to the authorization must be genuine.

(4) *Description of improvements.* Obtain a copy of the contract or sales agreement, signed by the borrower and the dealer, describing the type and extent of improvements to be made and the material to be used. The contract or sales agreement shall be of a type regularly used by the dealer in his business. A copy of the signed contract shall be attached to the credit application. The signature appearing on the copy of the contract or sales agreement may be a carbon imprint of the signature appearing on the original.

(5) *Advance notice to applicant.* Mail to the borrower or personally deliver to the borrower written notice, on a form approved by the Commissioner, of the insured's intention to disburse the proceeds of the loan. Such notice shall be directed to the borrower prior to the disbursement of the loan and in no event less than six calendar days prior to such disbursement. A record of such notice showing the date of mailing or delivery to the borrower shall be in the loan file.

(b) If the insured has not approved the dealer or has reason to withdraw approval of a dealer that has previously been approved under this section or § 201.590, the proceeds of a loan shall not be disbursed until:

(1) The insured has verified all statements contained on the borrower's credit application.

(2) The borrower has signed the borrower's completion certificate in the presence of the insured.

(3) The insured has inspected the work performed in every instance when the amount involved is $500 or more, and in at least one out of every three transactions when the amounts involved are less than $500.

(4) The insured has signed a statement to the effect that the above requirements were complied with prior to releasing the proceeds of any such loans. Such statement must accompany each loan report.

(c) *Exceptions.* The provisions of paragraphs (a) and (b) of this section shall not apply to direct loans.

(d) *Ineligible persons.* No loan shall be made where the insured has knowledge that any person participating in the transaction as dealer, salesman, broker, borrower, or in any other capacity has been barred from participation in the Title I program pursuant to § 200.190 et seq. of this chapter.

§ 201.9 Refinancing.

(a) *General requirements.* New obligations to liquidate loans previously reported for insurance pursuant to title I of the Act which may or may not include an additional amount advanced, to the extent permitted by § 201.3, and which may include the maximum finance charge permissible under § 201.4, will be covered by insurance if the new obligations meet the requirements of all applicable regulations in this part and the special provisions of this section.

(b) *Maximum maturity.* (1) A Class 1(a) loan or a Class 2(a) loan may be refinanced for an additional period not in excess of 7 years and 32 days from the date of the refinancing, provided that the term of the new note does not extend beyond 12 years from the date of the original note.

(2) A Class 1(b) loan may be refinanced for an additional period not in excess of 7 years and 32 days from the date of refinancing, but not to exceed 12 years from the date of the original note.

(3) A Class 2(b) loan may be refinanced for an additional period not in excess of 7 years and 32 days from the date of the refinancing, but not to exceed 12 years from the date of the original note, except that if a Class 2(b) loan is secured by a first mortgage, first deed of trust, or other security instrument, constituting a first lien upon the improved property, the new note may have a final maturity not in excess of 15 years and 32 days from the date of the refinancing, but not to exceed 25 years from the date of the original note.

(4) When a class 1 loan or a class 2 loan is made or refinanced and consolidated with another class 1 loan or class 2 loan, the new note evidencing the consolidated obligation shall not be for a longer term than that which the component loan having the shortest permissible maturity could have if made or refinanced alone.

(c) *Rebate.* The full unearned charge on the original note shall be refunded to the borrower. If no additional advance is made a handling charge not in excess of $5.00 may be assessed the borrower: *Provided,* That the provisions of this paragraph shall be applicable to loans refinanced on or after December 31, 1959.

(d) *Special cases.* The Commissioner may upon presentation of the facts approve the refinancing or refinancing and consolidation of any loan or loans upon such terms and conditions as he may determine within the limits provided by the act.

(e) *Deferred payments.* An agreement to defer payments on a note previously reported for insurance under the regulations in this part without rewriting the note is not considered refinancing Such agreement will not affect the insurance coverage on the loan provided that:

(1) Such agreement is evidenced in writing;

(2) Payment shall not be deferred for more than 5 months from the due date of the last fully paid installment, except that any period during which the borrower is a "person in the military service" as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall not be included in computing the 5-month period.

(3) Such agreement shall not extend the final maturity of the obligation beyond the maturity date of the obligation as provided by its original terms;

(4) The insured may assess the borrower for the cost of deferring payments if such assessment is not in excess of the contract rate in the jurisdiction in which the note is drawn, or the amount of late charges permitted by the note as authorized in § 201.2(e), whichever amount is the greater.

§ 201.10 Report of loans.

Loans shall be reported on the prescribed form to the Federal Housing Administration at Washington, D.C., within 31 days from the date of the note or date upon which it was purchased. Any loan refinanced as provided in § 201.9 shall likewise be reported on the prescribed form within 31 days from the date of refinancing. Any loan transferred as provided in § 201.12(e) shall be reported on the prescribed form within 31 days from the date of such transfer. If the loan or note is not in default, the Commissioner may, in his discretion, accept a late report.

§ 201.11 Claims.

(a) *Claim application.* Claim for reimbursement for loss on an eligible loan shall be made on a form provided by the Commissioner, and executed by a duly qualified officer of the insured. The claim shall be accompanied by the insured's complete credit and collection file pertaining to the transaction.

(b) *Claim after default.* Claim may be filed after default, provided demand has been made upon the debtor for the full unpaid balance of the note. For the purpose of determining the date of default, any payments received on an account, including payment on judgments predicated thereon, shall be applied to the earliest unpaid installment.

(c) *Maximum claim period.* (1) Claim shall be filed no later than 6 months after the due date of the final installment provided for in the note.

(2) If at the time of default or at any time subsequent to the default a person primarily or secondarily liable for the repayment of a loan is a "person in military service" as such term is defined in the Soldier's and Sailor's Civil Relief Act of 1940, as amended, the period during which he is in military service shall be excluded in computing the time within which claim is to be filed for reimbursement under the provisions of this section.

(d) *Extension of maximum claim period.* Upon presentation to the Commissioner of the facts of a particular case within the allowable claim period prescribed in this section, he may, in his

discretion, extend the time within which claim must be made, provided that in computing the claim no interest will be allowed for the period of such extension.

(e) *Claim amount.* An insured will be reimbursed for its losses on loans made in accordance with the regulations in this part up to the amount of its reserve as established by § 201.12. The amount of the reimbursement is determined by adding the items in subparagraphs (1), (2), (3), and (4) as follows:

(1) 90 percent of the net unpaid amount of the loan actually made or the actual purchase price of the note, whichever is the lesser.

(2) 90 percent of the uncollected interest earned up to the date of default plus 90 percent of the interest, computed at 7 percent per annum (5 percent per annum with respect to claims filed with the Commissioner prior to May 1, 1970) on the outstanding balance, computed from the date of default:

(i) To either the date of the claim application or for a period of 9 months and 31 days following such default date, whichever period of time is the lesser, or

(ii) To the date of certification of the claim for payment, in a case where an otherwise eligible claim has been held in suspense by the Commissioner pending a determination of the eligibility for insurance of other claims or loans, or by an investigation of the insured's loan or claim activities.

(3) Uncollected court costs, including fees paid for issuing, serving, and filing summons.

(4) Attorney's fees actually paid not exceeding:

(i) Twenty-five percent of the amount collected by the attorney on the defaulted note if the borrower is liable for the payment of such fee under the laws of the jurisdiction applicable to the note, and if the insured has not waived its claim against the borrower for such fees.

(ii) $50 or 15 percent of the balance due on the note, whichever is the lesser, if a judgment is secured by suit; or $10 or 15 percent of the balance due on the note, whichever is the lesser, if judgment is secured by confession after default.

(f) *Assignment of documents.* The note and any security held or judgment taken must be assigned in its entirety and if any claim has been filed in bankruptcy, insolvency, or probate proceedings, such claim shall likewise be assigned to the United States of America.

(g) *Form of assignment.* The following form of assignment properly dated shall be used in assigning a note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanics' lien, or any other security device in event of claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the United States of America.

(Financial Institution)

By ---

Title ---

Date ---

Provided, That if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable shall be used.

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

§ 201.12 Insurance reserve.

(a) *Legal limit.* Subject to the limitation on the Commissioner's authority to insure as stipulated in section 2 of Title I of the act, the Commissioner, pursuant to the provisions of § 201.11, will reimburse any insured for losses sustained by it in accordance with the general insurance reserve provisions of paragraph (b) of this section.

(b) There shall be maintained for each insured a general insurance reserve, which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations both in this Subpart A and in Subpart B of this part on and after March 1, 1950, and prior to the expiration of the Commissioner's authority to insure under the provisions of this Act, less the amount of all claims approved for payment by the Commissioner in connection with such loans and less the amount of any adjustments made pursuant to paragraph (c) of this section.

(c) *Adjustment of general reserve.* After August 1, 1956, the amount of the general insurance reserve to the credit of each insured shall be adjusted on July 1 of each year by deducting therefrom an amount equivalent to 15 percent of the amount of such insurance reserve on the records of the Commissioner as of the date of such adjustment: *Provided,* That no such adjustment shall reduce the insurance reserve of any insured to an amount less than $5,000: *Provided further,* That no such adjustment shall be made in the insurance reserve of any financial institution until the first day of July next following the expiration of a period of 30 months after the issuance of a contract of insurance to such institution by the Commissioner, and no such adjustment shall be made in the insurance reserve of any financial institution after the termination of the contract of insurance issued to such institution by the Commissioner, or after the termination of the Commissioner's authority to insure against losses pursuant to Title I of the National Housing Act.

(d) *Transfer of loans reported for insurance.* The insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a contract of insurance under Title I of the National Housing Act: *Provided,* That nothing contained herein shall be construed to prevent the pledging of such loans as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(e) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (July 1 through June 30) without the prior approval of the Commissioner. Except in cases involving the transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, the reports required by § 201.10 shall be submitted, indicating the intent of the parties with respect to the transfer of the insurance reserve; and, unless the approval of the Commissioner is obtained, the insurance reserve shall be transferred as follows:

(1) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase agreement, provided no installment payment is past due more than one calendar month at the time of purchase, reserve shall be transferred to the reserve of the purchasing institution, on the basis of 10 percent of the actual purchase price or net unpaid original advance, whichever is the lesser.

(2) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase, agreement, where one or more installment payments are past due more than one calendar month at the time of purchase, the loans and reserves shall be transferred on an earmarked basis. In the case of earmarked transfers all reserves accrued by reason of the loans transferred shall be transferred, but such reserves shall be available only for payment of claims on the loans transferred, and claims on such loans can be paid only up to the amount of such earmarked reserves.

(3) In cases involving the transfer of notes sold with recourse or under a guaranty, guarantee, or repurchase agreement, no insurance reserve will be transferred and no reports will be required.

(f) *FHA recovery shall not affect reserve.* Amounts which may be salvaged by the Commissioner with respect to a loan in connection with which an insured has been reimbursed under its contract of insurance shall not be added to the insurance reserve remaining to the credit of such insured.

§ 201.13 Insurance charge.

(a) *Rate.* The insured shall pay to the Commissioner on loans made or refinanced on or after August 1, 1968, an insurance charge equal to fifty one-hundredths (0.50) of 1 percent per annum of the net proceeds of any eligible loan reported and acknowledged for insurance. In computing the insurance charge, no charge shall be made for the fractional period of a month of 14 days or less, and a charge for a full month shall be made for the fractional period of a month of more than 14 days.

(b) *When payable—(1) Loan reports acknowledged prior to May 1, 1970.* Where the Commissioner acknowledges to the insured institution, prior to May 1, 1970, the receipt of a loan report, the insurance charge shall be paid as follows:

(i) If the loan has a maturity of 3 years and 32 days or less, the charge for the entire term shall be paid within 25 days after the Commissioner's acknowledgment of the loan report.

(ii) If the loan has a maturity of more than 3 years and 32 days, the charge shall be paid in installments. The first installment, equal to the charge for 3 years shall be paid within 25 days after the Commissioner's acknowledgment of the loan report. The second and succeeding installments, each equal to the charge for 1 year, shall be paid on the first and each succeeding anniversary of the first day of the month following the date of the note.

(2) *Loan reports acknowledged on or after May 1, 1970.* Where the Commissioner acknowledges to the insured institution, on or after May 1, 1970, the receipt of a loan report, the insurance charge shall be paid as follows:

(i) If the loan has a maturity of 25 months or less, the charge for the entire term shall be paid within 25 days after the Commissioner's acknowledgment of the loan report.

(ii) If the loan has a maturity of more than 25 months, the insurance charge shall be payable in installments. The first installment shall be equal to the charge for 1 year and be paid within 25 days of the Commissioner's acknowledgement of the loan report. The second and succeeding installments, each equal to the charge for 1 year, shall be paid on the first and each succeeding anniversary of the first day of the month following the date of the loan.

(c) *Notes transferred.* Any adjustments of the insurance charge already paid on any obligation transferred between insureds shall be made by the insureds, except that any unpaid installments of the insurance charge shall be paid by the purchasing insured.

(d) *Refund or abatement.* There shall be no refund or abatement of any portion or installment of the insurance charge except:

(1) The charge on a refinanced note may be credited with the unearned portion of the charge on the original note;

(2) Insurance charges falling due after claim is filed or the note is prepaid in full;

(3) The charge paid on a loan or portion thereof found to be ineligible; but no refund shall be made unless a claim is denied by the Commissioner or the ineligibility is reported by the insured promptly upon discovery and an application for refund made. In no event shall charges be refunded where the application for refund is not made until after the loan is paid in full.

(e) *When not chargeable to borrower.* The insurance charge paid by the insured shall not be charged to the borrower if such charge would cause the total payments made by the borrower to exceed the maximum permissible amount which may be charged to the borrower for interest, discount, and all other charges in connection with the transaction.

§ 201.14 Administrative reports and examination.

The Commissioner, or his authorized representative, may at any time call upon an insured for such reports as he may deem to be necessary in connection with the regulations in this part, or may inspect the books or accounts of the insured as they pertain to the loans reported for insurance.

§ 201.15 Amendments.

The regulations in this part may be amended by the Commissioner at any time, but such amendment shall not adversely affect the insurance privileges of an insured with respect to any loan previously made or in the process of being made. Unless otherwise provided, an amendment shall be applicable to any loan or the refinancing of any loan, when the loan or note is made pursuant to an application dated on or after the effective date of such amendment.

§ 201.16 Effective date.

The regulations in this part are effective as to all loans made on and after October 1, 1954, except that § 201.11(c)(2) and § 201.11(e)(4) shall be effective as to all claims paid on and after October 1, 1954, and § 201.12(c) shall be effective as to all adjustments made after October 1, 1954.

Subpart B—Mobile Home Loans

§ 201.501 Definitions.

As used in the regulations in this part, the term—

(a) "Act" means the National Housing Act.

(b) "Borrower" means a natural person who applies for and receives a loan for the purchase of a mobile home in reliance upon the provisions of the Act.

(c) "Certificate of origin" means a document establishing that a mobile home is free and clear of all legal encumbrances.

(d) "Commissioner" means the Federal Housing Commissioner or his duly authorized representative.

(e) "Contract of insurance" includes all of the provisions of the regulations in this subpart and the applicable provisions of the Act.

(f) "Form" means a document which is provided by or satisfactory to the Commissioner.

(g) "Insured" means a financial institution holding a contract of insurance under title I of the Act.

(h) "Loan" means an advance of funds or credit or the purchase of an obligation.

(i) "Manufacturer's invoice" means a document which is officially issued by the manufacturer stating the true wholesale price of a mobile home, its furnishings, equipment and accessories. The document shall be on a form which is in general use in the industry.

(j) "Mobile home" means a movable dwelling unit designed and constructed for permanent occupancy by a single family which dwelling unit contains permanent eating, cooking, sleeping, and sanitary facilities.

(k) "Obligation" means evidence of monetary indebtedness.

(l) "Owner" means a borrower who has at least a one-half interest in the real property upon which the mobile home is placed, which interest is a fee simple title and such title may be subject to a mortgage, deed of trust or other lien securing a debt or where the borrower is a purchaser under a mutually binding recorded contract for the purchase of the real property, is rightfully in possession, and the purchase price is payable in equal installments.

(m) "Principal residence" means that place where the borrower expects to live at least 9 months of the year.

§ 201.505 Purpose of subpart.

The provisions in this subpart contain the requirements under which an approved financial institution may obtain insurance of loans made for the purchase of mobile homes.

Property and Structural Requirements

§ 201.510 New or used mobile homes.

The loan shall be made only for financing the purchase of a mobile home which is either new or used as follows:

(a) *New.* A new mobile home, meaning a unit that has not been previously occupied at the time of purchase.

(b) *Used.* A used mobile home, meaning either a unit being sold by one who acquired such unit with financing provided under this subpart; or a unit that the purchaser has been occupying pursuant to a lease from a governmental agency, if such purchaser had been displaced from previous housing as a result of a disaster which the President has determined to be a major disaster.

§ 201.515 Borrower's use of mobile home.

The borrower shall establish, to the satisfaction of the Commissioner, that he is purchasing the mobile home for use and occupancy as his principal residence.

§ 201.520 Structural design and standards.

(a) *Basic requirements.* The mobile home shall be designed and constructed so as to insure adequate durability and livability.

(b) *ANSI criteria.* The requirements of paragraph (a) of this section may be satisfied by compliance with the specifications in effect at the time the loan is made which are prescribed in mobile home standard No. A 119.1, as approved by the American National Standards Institute (formerly the United States of America Institute, Inc.), hereinafter referred to as "ANSI". A certification shall be obtained from the manufacturer stating that the mobile home was constructed in accordance with the ANSI requirements.

(c) *Minimum size.* The mobile home shall be at least 40 feet long and 10

feet wide, or shall consist of a module or modules having minimum floor space area of at least 400 square feet.

§ 201.525 Mobile home location standards.

(a) *In general.* The mobile home shall be placed either in a mobile home park, approved by the Commissioner, or on a site owned by the borrower which meets certain requirements prescribed by the Commissioner.

(b) *Mobile home park.* Where the mobile home is to be placed on a mobile home park, approved by the Commissioner, the park shall meet such minimum standards and specifications relating to sanitation, site or lot location, vehicular access, landscaping, and such other requirements conducive to an adequate environment as the Commissioner shall deem necessary.

(c) *Owner's site.* Where the mobile home is to be placed on a site owned by the borrower the following requirements shall be met:

(1) In all instances, except where it is served by a central sewage and water facility subject to supervision and control by a governmental authority, the site shall have a minimum size of not less than one-fourth acre.

(2) The insured shall obtain from the borrower or the dealer a certification made by an authorized local official establishing that the site has adequate sanitary facilities and is in conformance with applicable sanitary codes in the jurisdiction where the mobile home is to be located.

(3) The insured shall obtain a certification from the dealer and the borrower establishing that current zoning of the site does not preclude emplacement of a mobile home.

MAXIMUM LOAN, FEES AND CHARGES

§ 201.530 Maximum loan amount.

(a) *Basic limitation.* The mobile home loan proceeds shall not exceed the lesser of $10,000 ($15,000 where the mobile home is composed of two or more modules) or 115 percent of the total price for such home, as stated in the manufacturer's invoice (115 percent of the wholesale blue book price, if a previously financed used mobile home is involved). The charges and fees authorized in paragraph (b) of this section may be added to the loan, if the inclusion of such items does not increase the total loan proceeds to more than $10,000 ($15,000 where the mobile home is composed of two or more modules).

(b) *Permissible charges and fees.* The following charges and fees are authorized:

(1) Filing or recording fees and charges.

(2) Documentary stamp taxes.

(3) State and local sales taxes.

(4) Costs of comprehensive and extended coverage insurance and a vendor's single interest coverage. The term of the initial policy shall not exceed 5 years.

(5) Costs of transportation or freight as shown on the invoice, not to exceed $400 for a mobile home or where the mobile home consists of two or more modules, $600.

(6) Itemized setup charges by the dealer for installing the mobile home on site, not to exceed $200 or where a mobile home consists of two or more modules, $400.

§ 201.535 Borrower's minimum investment.

The borrower shall make a minimum cash downpayment of at least 5 percent of the first $6,000 of the total cost of the mobile home as shown in the purchase contract (excluding permissible charges and fees provided for in § 201.530 (b)) plus 10 percent of any amount in excess of $6,000.

§ 201.540 Financing charges.

(a) *Annual percentage rate.* The maximum permissible financing charge which may be paid or collected by the insured for interest discount and fees of all kinds in connection with the loan transaction expressed as an annual percentage rate varies from 7.63 percent to 10.57 percent depending upon the amount and term of the loan.

(b) *Maximum discount.* Charges for individual loans shall be made in accordance with tables of calculations issued by the Commissioner based upon the following requirements:

(1) On amounts not in excess of $2,500, a charge equivalent to $5.50 discount per $100 of the original face amount of a 1 year note payable in equal installments.

(2) On amounts in excess of $2,500, a charge equivalent to $4.50 discount per $100 of the original face amount of a 1 year note payable in equal installments.

(c) *Prepayment rebate.* If an obligation is paid in full prior to maturity, the insured shall rebate the full unearned charge, where such rebate is $1 or more. Where the law of the jurisdiction permits an acquisition or minimum retained charge, such charge may be deducted from the rebate.

ELIGIBLE BORROWERS

§ 201.545 Credit requirements.

(a) *Credit application.* The insured shall obtain a dated credit application form executed by the borrower. The loan file shall contain either a commercial credit report obtained by the insured on the borrower, or evidence that the insured has made an adequate investigation of the borrower's credit.

(b) *Borrower's credit.* The credit information relied upon by the insured shall, in its judgment, clearly show the borrower to be solvent with reasonable ability to pay the obligation and, in all other respects, a reasonable credit risk.

(c) *Effect of misstatements.* If after the loan has been made, in good faith, the insured discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, he shall promptly report such discovery to the Commissioner. Any such discovery, however, shall not affect the Commissioner's insurance, provided that the validity of the lien on the mobile home has not been impaired.

§ 201.550 Limitation on outstanding loans for same borrower.

(a) *Outstanding mobile home loan.* If the borrower is already obligated under a loan for the purchase of a mobile home financed under this subpart, the insured shall determine that such loan has or will be paid in full prior to disbursal of the proceeds of an additional mobile home loan. This requirement may be waived by the Commissioner, if the loan would otherwise be eligible.

(b) *Outstanding Federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than 15 days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government. This requirement may be waived by the Commissioner, if the borrower is in default under an obligation by reason of his being in the military service.

LOAN REQUIREMENTS

§ 201.555 Payment provisions.

The loan shall be payable in one of the following ways:

(a) In equal installments falling due monthly, or every 2 weeks. The first payment shall be due no later than 2 months from the date of the loan. The loan may provide for a first or final payment in an amount other than the amount of the regular installment. In such instance, the first or final installment shall not be less than one-half nor more than one and one-half times the amount of the regular installment.

(b) In equal installments at intervals corresponding with the borrower's flow of income. In such cases, the obligation may provide for installments payable quarterly, semiannually or annually, with the first payment to be made no later than 1 year from the date of the obligation and subsequent payments to be made at least once a year.

§ 201.560 Maturity provisions.

The obligation shall have a term of not less than 1 year or more than 12 years and 32 days from the date it is made, except that an obligation for a mobile home composed of two or more modules shall have a term of not more than 15 years and 32 days.

§ 201.565 Default provision.

The obligation shall contain a provision for acceleration of maturity, at the option of the holder, upon default in the payment of any installment upon the due date thereof, or failure to make the payments of rent, taxes, or other charges incurred in connection with the lot or site where the mobile home is emplaced.

§ 201.570 Late charges.

The obligation may provide for a late charge not to exceed 5 cents per $1 of each installment more than 10 days in arrears. No late charge in excess of $7.50 may be made on any past due installment. Any late charge collected from the

borrower as a penalty shall be so billed and evidence of such billing must be in the loan file if claim therefor is made under the Contract of Insurance.

§ 201.575 Validity and enforceability of loan.

The obligation shall be valid and enforceable against the borrower and be complete and regular on its face. The signatures of all parties on the document evidencing the loan obligation must be genuine. The obligation shall be secured by a properly recorded financing statement and security agreement or other security instrument which creates a first lien against the mobile home and its furnishings, equipment, and accessories.

§ 201.580 Provision concerning past due loans.

A loan shall not be purchased if any installment thereon is past due more than 15 days at the date of purchase, except purchases of loans from other insured lending institutions which loans have been previously reported for insurance.

§ 201.585 Refinancing.

A new obligation entered into for the purpose of liquidating a loan previously reported for insurance may be insured, if such new loan meets the requirements of this subpart and if the term of the new loan does not exceed 12 years and 32 days or 17 years from the date of the original loan. The full amount of any unearned financing charge on the original obligation shall be refunded to the borrower. The borrower may be assessed a handling charge of not more than $25 in connection with the refinancing.

DEALER AND DIRECT LOANS

§ 201.590 Types of loan transactions.

The transaction may involve a dealer loan where the dealer has been approved by and makes the loan arrangements with the insured or it may involve a direct loan obtained by the borrower directly from the insured.

§ 201.595 Dealer investigation, approval and control.

Where the loan involves a dealer, the insured shall comply with the following requirements:

(a) *Requisites of approved dealer.* The insured shall approve as dealer an applicant who the insured considers to be reliable, financially responsible, and qualified to satisfactorily install the mobile home and able to provide the borrower with proper services in connection with the warranties covering such home. This approval shall be evidenced by an executed application form, together with a financial statement certified by a licensed public accountant. The application shall be dated and signed by the dealer and shall contain the signature of the insured signifying approval of the dealer.

(b) *Financial statement required.* The insured shall obtain a financial statement of the dealer, certified by a licensed public accountant, not less than once every 12 months. If no loans have been purchased, prior to the date of such financial statement, the insured shall approve the dealer as provided in paragraph (a) of this section.

(c) *Contents of file and records.* The insured shall maintain a file on each dealer which shall contain information as follows:

(1) The dealer application as approved by the insured.

(2) Financial statements, credit reports and any other information obtained to support the dealer application.

(3) Records of inspection of the dealer's place of business.

(4) Any memoranda relating to the insured's experience wtih loans originated by the dealer.

(d) *Reserve account and guarantees.* Reserve accounts to cover losses on loans reported to the Commissioner for insurance are prohibited. The insured may require a dealer or other person to endorse or guarantee payment of loan obligations so long as no reserve account is involved, and any such undertaking must cover the full amount due on the obligation. The provisions of this paragraph shall not apply to agreements between insured lenders covering the transfer of loans already reported for insurance.

§ 201.600 Procedures on direct loans.

Where the borrower applies for a loan, not through a dealer, but directly to the insured, the provisions of § 201.595 shall not apply. In such instance, the insured, the borrower and the seller shall comply with all other requirements of this subpart, and the proceeds check shall be drawn jointly to the order of the borrower and the seller of the mobile home.

§ 201.605 Placement certificate.

(a) Prior to the disbursement of the loan proceeds, the insured shall obtain a placement certificate form signed by the borrower and the dealer or seller establishing that:

(1) The mobile home has been placed on a site meeting the requirements of § 201.525.

(2) That the borrower has neither been paid nor offered, as inducement for the consummation of the transaction, any cash payment or rebate, nor has it been represented to the borrower that he will receive a cash bonus or commission on future sales.

(b) If the insured has information to the contrary with regard to the statements in the placement certificate, he shall not disburse the loan proceeds. In the absence of such contrary information, he may disburse the loan proceeds in reliance on the statements contained in the placement certificate.

§ 201.610 Advance notice of disbursement.

The insured shall mail to the borrower the written advance notice form of the insured's intention to disburse the proceeds of the loan. Such notice shall be mailed not less than 6 calendar days prior to actual disbursement. A record of such notice showing the date of mailing to the borrower shall be retained in the insured's loan file.

§ 201.615 Precautionary measures.

If the insured has not approved the dealer or has reason to withdraw the approval of a dealer, that has previously been approved under § 201.595 or § 201.8, the proceeds of a loan to such dealer shall not be disbursed until:

(a) The insured has verified all statements contained on the borrower's credit application.

(b) The borrower and dealer have each signed the placement certificate in the presence of the insured.

(c) The insured has inspected the site and the installation.

(d) The insured has signed a statement to the effect that the above requirements were met prior to releasing the proceeds of the loan. This statement of compliance shall accompany each loan report.

§ 201.620 Persons ineligible for participation.

No loan shall be made or disbursed where the insured has knowledge that any person participating in the transaction as dealer, salesman, borrower, or in any other capacity, has been barred from participation, pursuant to § 200.190 et seq. of this chapter, in either of the programs provided for in Subparts A and B of this part.

INSURANCE CHARGE REQUIREMENTS

§ 201.625 Rate of insurance charge.

The insured shall pay to the Commissioner an insurance charge equal to fifty one-hundredths (0.50) of 1 percent per annum of the net proceeds of any eligible loan reported and acknowledged for insurance. In computing the insurance charge, no charge shall be made for a period of 14 days or less, and a charge for a month shall be made for a period of more than 14 days.

§ 201.630 When insurance charge payable.

(a) *Single payment.* On loans having a maturity of 25 months or less, the insurance charge for the entire term of the loan shall be paid within 25 days after the date the Commissioner acknowledges to the insured institution the receipt of the report of the loan.

(b) *Installment payments.* On loans having a maturity in excess of 25 months, the insurance charge shall be paid in installments. The first installment shall be equal to the charge for 1 year and be paid within 25 days of the Commissioner's acknowledgment of the loan report. The second and succeeding installments, each equal to the charge for 1 year, shall be paid on the first and each succeeding anniversary of the first day of the month following the date of the loan.

§ 201.635 Insurance charge adjustments on transfers.

Where there is a transfer of obligations between insured lenders and the insurance charge on such obligations has

already been paid, any adjustments, of such charge shall be made by the lenders involved, except that any unpaid installments of the insurance charge shall be paid by the purchasing lender.

§ 201.640 Refund or abatement of insurance charge.

An insured shall be entitled to a refund or abatement of insurance charges only in the following instances:

(a) Where the obligation has been refinanced, the unearned portion of the charge on the original obligation shall be credited to the charge on the refinanced loan.

(b) Where the obligation is prepaid in full or an insurance claim is filed, charges falling due after such prepayment or claim shall be abated.

(c) Where a loan (or a portion thereof) is found to be ineligible for insurance, charges paid on the ineligible portion shall be refunded. Such refund shall be made, however, only if a claim is denied by the Commissioner or the ineligibility is reported by the insured promptly upon discovery. In no event shall a charge be refunded on the basis of loan ineligibility where the application for refund is made after the loan has been paid in full.

§ 201.645 Limit on charge to borrower.

The insurance charge paid by the insured shall not be passed on to the borrower, if such action would cause the total payments for which the borrower is liable to exceed the maximum permissible amount which may be collected from him for interest, discount, and all other charges in connection with the transaction.

LOAN REPORTING AND SERVICING

§ 201.650 Report of loans.

(a) *Date of reports.* A loan report on the prescribed form shall be transmitted to the Federal Housing Administration at Washington, D.C., within 31 days from the following dates:

(1) In the case of an original loan, the date of the loan or the date upon which it was purchased by the insured.

(2) In the case of a refinancing, the date of the refinancing loan.

(3) In the case of a transfer of the loan to another insured lender, the date of the transfer.

(b) *Late reports.* If the loan is current, the Commissioner may in his discretion, accept a late report on a loan where the insured certifies that the obligation is not in default.

(c) *Transfer of loan between insured lenders.* All of the provisions of § 201.12 (d) governing the transfer of loans between insured lenders shall apply to loans insured under this Subpart B.

§ 201.655 Servicing and collection.

The insured shall service loans in accordance with accepted practices of prudent lending institutions. The insured shall have adequate facilities for contacting the borrower in the event of default and shall otherwise exercise diligence in collecting the amount due. The insured shall remain responsible to the Commissioner for proper collection efforts, even though the actual servicing and collection may be performed by an agent of such insured.

§ 201.660 Administrative reports and examinations.

The Commissioner may at any time call upon an insured for such reports as the Commissioner may deem to be necessary in connection with the regulations in this subpart. The Commissioner may inspect the books or accounts of the insured as they pertain to the loans reported for insurance.

CLAIMS

§ 201.665 Claim application.

(a) *How to file.* Claim for reimbursement for loss on any eligible loan shall be made on a form provided by the Commissioner and executed by a qualified officer of the insured. The claim shall be accompanied by the insured's complete file pertaining to the transaction. Where the insured is required by law to keep an original document in his possession, a copy of the original document shall be acceptable.

(b) *When to file.* Claim shall not be filed by the insured until after default, repossession, and sale of the mobile home. Such claim shall be filed no later than 9 months and 31 days after the due date of the earliest fully unpaid installment provided for in the obligation, unless an extension is requested and approved by the Commissioner.

§ 201.670 Assignment of security.

If a deficiency judgment or other security has been obtained, it shall be assigned to the United States of America, on a form recordable in the jurisdiction in which the judgment or other security was taken.

§ 201.675 Insurance reserve.

All of the provisions of § 201.12 with respect to the maintenance for each insured lender of a general insurance reserve shall apply with respect to loans reported for insurance under subparts A and B. The aggregate amount of loans advanced by an insured lender, for the purposes of determining its general insurance reserve, shall include loans reported for insurance under both subparts A and B of this part.

§ 201.680 Amount of claim.

An insured may be reimbursed for losses on loans made in accordance with the regulations under this subpart, up to the amount of its general insurance reserve. The amount of the reimbursement is determined by following the computation steps prescribed in paragraphs (a), (b) and (c) of this section:

(a) Deduct from the unpaid amount of the obligation (net unpaid principal and the earned portion of the financing charge, at the time of default) the actual sales price obtained for the mobile home following its repossession, or the appraised value of the mobile home, whichever amount is the greater. The determination of appraised value (for the purposes of this paragraph) shall be made by the Commissioner, at his option, on the basis of either the value listed in a current accepted "blue or red book" value rating publication (establishing wholesale values for comparable mobile homes in the geographic rating area) or on the basis of an actual appraisal of the mobile home. The Commissioner's determination of appraised value shall be binding on the insured for the purposes of establishing its loss.

(b) Add to 90 percent of the amount determined under paragraph (a) of this section 90 percent of the interest at 7 percent per annum on the amount determined under paragraph (a) of this section, computed from the date of default:

(1) To either the date of the claim application or for a period of 9 months and 31 days following such default date, whichever period of time is the lesser or,

(2) To the date of certification of the claim for payment, in a case where an otherwise eligible claim has been held in suspense by the Commissioner pending a determination of the eligibility for insurance of other claims or loans, or by an investigation of the insured's loan or claim activities.

(c) Add to the amount obtained under paragraph (b) of this section the following allowances for expenditures made by the insured:

(1) The costs of repossessing and refurbishing the mobile home, not to exceed $500.

(2) Attorney's fees, not to exceed $100.

(3) Uncollected court costs including fees paid for issuing, serving and filing summons.

(4) A sales commission to the dealer for the resale of the repossessed mobile home, not to exceed 3 percent of the sales price.

AMENDMENTS

§ 201.900 Amendment and effect.

The regulations in this part may be amended by the Commissioner at any time, but such amendment shall not adversely affect the insurance privileges of an insured with respect to any loan previously made or in the process of being made. Unless otherwise provided, an amendment shall be applicable to any loan or the refinancing of any loan, when the loan is made pursuant to an application dated on or after the effective date of such amendment.

PART 202—CLASS 3 PROPERTY IMPROVEMENT LOANS

Sec.

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AUTHORITY: The provisions of this Part 202 issued under sec. 2, 48 Stat. 1246, as amended; 12 U.S.C. 1703.

§ 202.1 Definitions.

As used in the regulations in this part:

(a) "Act" means the National Housing Act, as amended.

(b) "Administration" means the Federal Housing Administration.

(c) "Commissioner" means the Federal Housing Commission or his duly authorized representative.

(d) "Contract of insurance" includes all of the provisions of the regulations in this part and of the applicable provisions of the act.

(e) "Insured" means any financial institution holding a Contract of Insurance under Title I of the act.

(f) "Loan" and "Class 3 loan" mean any loan made under the regulations in this part for the purpose of financing the construction of a new structure to be used in whole or in part for residential purposes.

(g) "Borrower" means one who is an eligible owner or lessee of real property upon which a new structure is to be or has been constructed pursuant to the provisions of the act and the regulations in this part and who applies for and receives an advance of credit in reliance upon the provisions of the act and the regulations in this part.

(h) "Installment payment" includes that deposit to an account or fund which represents the partial repayment of a loan.

(i) "Mortgage" includes a note, bond, deed of trust, or other evidence of indebtedness or security instrument taken in connection with a Class 3 loan.

(j) "Class 3 structure" means a structure, the construction of which is financed with the proceeds of an eligible Class 3 loan.

(k) "Discount loan" means a loan made on a discount, gross charge, or non-interest-bearing basis.

(l) "Interest-bearing loan" means a loan represented by a note payable in monthly installments bearing simple interest on the principal outstanding from time to time.

§ 202.3 Eligible borrowers.

A borrower, in order to be eligible for a Class 3 loan:

(a) *Eligible owners or lessees.* Shall be (1) the fee simple owner of unencumbered land upon which the new structure is to be built or (2) the lessee of such unencumbered land under a lease from the United States Government for a term of at least 6 months beyond the maturity of the loan or (3) the lessee of such unencumbered land under a lease for 99 years which is renewable or under a lease which has 50 years to run from the date the mortgage is executed. If the borrower is a lessee the provisions of the lease shall be submitted to and approved by the Commissioner. Any lease other than a lease from the United States Government must provide for an annual rental not in excess of 5 percent of the valuation placed upon the unimproved land by the insured and shall contain a provision which will entitle the lessee to obtain a fee simple title to such land upon payment at any time after 1 month's written notice of a sum not in excess of the appraised valuation placed upon such land at the time the loan is made. If the parties so desire the lease may provide for the deferment of such right to obtain the fee simple title for a period not to exceed 5 years from the date of the mortgage; but in any event the lease must contain a provision giving the Federal Housing Commissioner the option to purchase the fee simple title upon 60 days' written notice to the lessor in the event the Commissioner acquires the interest of the lessee pursuant to the provisions of the regulations in this part.

(b) *Borrowers equity.* Shall establish to the satisfaction of the insured by certification on the credit application provided or in § 202.5 that after the mortgage, deed of trust, or similar instrument has been recorded, the property will be free and clear of all liens other than such mortgage, deed of trust, or similar instrument, except taxes and ground rents not due and payable and special assessments not in arrears, and that in addition to the loan he has an investment in the property in cash, in land, or an interest in the land in an amount equal to 5 percent of the appraised value of the completed property as determined under § 202.8(b).

§ 202.4 Eligible improvements.

(a) *Purpose.* A loan must be for the purpose of financing the construction of a Class 3 structure and appurtenances thereto located within the United States, its territories and possessions, and which is commenced on or after August 19, 1947, in reliance upon the credit facilities afforded by Title I of the National Housing Act, as amended, and which conforms to the following requirements relating to the land and improvements thereon:

(1) The development and use of land shall not violate any zoning or deed restrictions applicable to the project site and must comply with all applicable building regulations.

(2) The land shall comprise a single plot of not less than 4,000 square feet.

(3) Vehicular access to the property shall be provided by a public street or way or private means protected by a permanent easement.

(4) Grading or drainage shall divert water away from buildings and off the site.

(5) The structure shall be limited in design to single-family occupancy.

(6) The structure shall have a living room which may contain space for cooking and dining, and at least one separate room designed for sleeping purposes. The total floor area shall not be less than 360 square feet.

(7) All rooms, including bathrooms, if any, shall be provided with one or more windows to permit adequate natural light and ventilation.

(8) Where winter house heating by means other than electricity is the established custom, a safe means of disposing of the products of combustion to the outside air shall be provided.

(9) Each single-family unit shall be provided with an on-site supply of safe and palatable water. Where public or community water service is available to the subject property, it shall be connected with the structure and with the fixtures required in subparagraph (12) of this paragraph.

(10) Each single-family unit shall be provided with a sanitary means of sewage disposal. Where public or community sewerage is available to the property, connection shall be made thereto and to the fixtures required in subparagraph (12) of this paragraph.

(11) Where individual water supply and sewerage systems are used, the installations shall conform with local sanitary regulations for such individual systems. Where on-site well or cistern supply equipped with a pump and an on-site sanitary pit privy are used, when this conforms with the established custom of the neighborhood, the installation shall comply with the recommendations of the local department of health or in the absence of such recommendations with the United States Public Health Service publications "Rural Water Supply Sanitation" or "Individual Sewage Disposal Systems." Evidence of compliance shall be secured from the health authority having jurisdiction and the insured may rely upon such evidence as establishing compliance with this subparagraph.

(12) Where connection with a public or community water and sewage disposal system is made as required in subparagraphs (9) and (10) of this paragraph, a kitchen sink and bathroom with bathtub or shower, water closet and lavatory shall be provided. This requirement also applies when an individual water-carriage sewage disposal system is installed on the property. When disposal is by sanitary pit privy, the water closet and lavatory may be omitted and the other fixtures shall be connected with a dry well. When water is provided by a well or cistern supply and a privy is used, all bathroom fixtures may be omitted.

(13) Where electricity is available, connection shall be made thereto.

(14) In the case of a loan which is for the purpose of financing the building of a Class 3 structure for sale or for rent, the borrower shall certify to the insured that the footings, foundations, columns, and structural elements of load bearing sections of the structure, including exterior walls, interior partitions, floors, ceilings, roofs and, when included, heating, plumbing and electrical installations comply with the Federal Housing Administration minimum construction requirements contained in the "Minimum Property Requirements for Properties of One or Two Living Units" for the area in which the property is located.

(15) The above conditions may be varied under special circumstances and in certain areas upon prior approval of the Commissioner.

(b) *Unfinished structures.* The proceeds of a loan shall not be used to finance the cost of completing an unfinished structure, unless the unfinished structure was begun under a Class 3 loan, in which case the total of all such loans shall not exceed $4,500.

(c) *Architectural services.* The proceeds of a loan may be used to pay for architectural and engineering services and builders' profit in connection with

the building of new structures financed in accordance with the regulations in this part.

(d) *Refinancing existing obligations prohibited.* The proceeds of a loan shall not be used for the purpose of refinancing existing obligations not previously made or reported for insurance pursuant to the regulations in this part.

§ 202.5 Credits

(a) *Credit application.* Prior to making a loan the insured shall obtain a dated credit application executed by the borrower on a form approved by the Commissioner. A separate credit application is required for each loan made or mortgage purchased.

(b) *Credit investigation.* The credit application, supplemented by such other information as the insured deems necessary, must, in the judgment of the insured, clearly show the borrower to be solvent, with reasonable ability to pay the obligation and in other respects a reasonable credit risk. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealers, or others, the eligibility of the mortgage for insurance will not be affected. However, the insured shall promptly report such discovery to the Commissioner.

(c) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of fact made by the borrower which are called for by the borrower's credit application.

(d) *Outstanding FHA and direct Federal obligations.* The proceeds of a loan shall not be disbursed if the insured has knowledge that the borrower is past due more than 15 days as to either principal or interest with respect to an obligation owing to, or insured by, any department or agency of the Federal Government: *Provided,* That nothing contained herein shall prevent the making of a loan otherwise eligibile, even though the borrower is in default under such an obligation by reason of his military service and the approval of the Commissioner is obtained.

(e) *Past due Title I mortgages at time of purchase.* A mortgage shall not be purchased when any installment thereon is past due more than 15 days at the date of purchase except purchases of mortgages under the provisions of § 202.12.

(f) *Collections.* The insured is required to service loans in accordance with acceptable practices of prudent lending institutions. In the event of default, the insured should have adequate facilities for contacting the borrower and otherwise exercise diligence in collecting the amount due. The insured is responsible to the Commissioner for proper collection efforts, even though actual collection may be performed by an agent.

§ 202.6 Eligible interest bearing loans.

(a) *Mortgage provisions.* In order to be eligible for insurance a loan shall be secured by collateral security in the form of a duly recorded first mortgage, first deed of trust, or similar instrument which constitutes a first lien upon a fee simple or leasehold interest in the land and buildings, appurtenances, and improvements thereon and which:

(1) Is in a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage, deed of trust, or similar instrument is situated and involves a principal amount not in excess of $4,500.

(2) Shall provide for interest at such rate as may be agreed upon between the borrower and the insured but in no case shall such interest be in excess of 4½ percent per annum on the outstanding principal. Interest and principal shall be payable in monthly installments (or other periodic installments as provided in subparagraph (11) of this paragraph. In the event interest is payable in installments corresponding to the income periods shown on the cerdit application, such interest payments may be required in advance for each installment period.)

(3) May provide for payments by the borrower to the insured on each installment payment date of an amount equal to the annual insurance charge payable by the insured to the Commissioner, divided by the number of installment payment dates to elapse prior to the date such charge is due and payable to the Commissioner.

(4) Shall provide for such equal payments by the borrower to the insured on each installment payment date as will amortize the ground rents, if any, and the estimated amount of all taxes, special asessments, if any, and fire and other hazard insurance premiums, within a period ending 1 month prior to the date on which same became delinquent. Such payments shall be held by the insured in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower. The mortgage shall also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums should prove to be more or less than the actual amount thereof so paid by the insured.

(5) Shall contain a privilege of prepayment in full or in amounts equal to one or more installment payments on the principal that are next due on the mortgage at any interest payment date upon 30 days' prior notice and without premium or penalty.

(6) Shall provide that all installment payments to be made by the borrower to the insured shall be added together and the aggregate amount thereof shall be applied to the following items in the order set forth:

(i) Insurance charges due the Federal Housing Commissioner.

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

(iii) Interest on the loan.

(iv) Amortization of the principal of the loan.

(7) May provide for a late charge to be paid by the borrower, not to exceed 2 cents for each dollar for each installment payment more than 15 days in arrears. No late charge may be accrued in excess of $5.00. The borrower must be billed for the penalties collected as such, and evidence of such billings must be in the file if claim is made under the contract of insurance.

(8) Shall contain a provision for acceleration of maturity at the option of the holder in the event of default.

(9) Shall not have a final maturity in excess of 20 years and 5 calendar months.

(10) Shall provide for not more than 240 monthly payments which shall fall due on the first day of a month and unless the approval of the Commissioner is obtained, the first such payment shall fall due not less than 6 days nor more than 6 calendar months from the date of the mortgage, except as provided in subparagraph (11) of this paragraph.

(11) In instances in which the credit application of the borrower indicates that not less than 51 percent of the income of the borrower is derived directly from the sale of agricultural crops, commodities or livestock produced by him, the mortgage may provide, in lieu of monthly installments, for substantially equal installment payments corresponding to the income periods shown on the credit application: *Provided, however,* That the first payment must be within 12 months of the date of the mortgage and that at least one payment must be made during each calendar year thereafter.

(b) *Borrowers' payments.* The borrower must pay to the insured, upon the execution of the mortgage, a sum that will be sufficient to pay premiums on fire and other insurance required by the insured pursuant to the terms of the mortgage, and ground rents, if any estimated taxes, special assessments, drainage, and irrigation charges applicable to the period beginning on the date to which such ground rents, taxes, assessments, and charges were last paid and ending on the date of the first periodic payment under the mortgage. The borrower, at such time, may also be required to pay a sum equal to the first annual insurance charge plus an amount equal to one-twelfth of the annual insurance charge multiplied by the number of months to elapse from the date of the closing of the loan to the date of the first periodic payment, and if the mortgage provides for payment of interest in advance, interest to the due date of the first periodic payment thereunder. The insured may charge the borrower any fees paid to the Administration and an initial service charge in an amount sufficient to reimburse the insured for the cost of closing the transaction, including appraisal and construction inspection fees but in no case shall the amount of such service charge be in excess of 2 percent of the original principal amount of the loan.

(c) *Recording fees and title costs.* In addition to the charges hereinbefore mentioned the insured may collect from the borrower only recording fees and such costs of title search as are customary in the community.

§ 202.7 Eligible discount loans.

(a) A "discount" loan shall be secured by collateral security in the form of a duly recorded first mortgage, first deed of trust or other similar instrument, which is approved as to form by the Commissioner and which constitutes a first lien upon a fee simple or leasehold interest in the land and buildings, appurtenances, and improvements thereon and:

(1) Shall not be in excess of $4,500 exclusive of financing charges to the borrower.

(2) Shall not have a maturity in excess of 20 years and 5 calendar months.

(3) May provide for a maximum financing charge to be paid by the borrower for interest, discount, and fees of all kinds, other than those referred to in subparagraph (4) of this paragraph and paragraphs (b) and (c) of this section, in connection with the transaction not in excess of an amount based on tables of calculations issued by the Federal Housing Commissioner, and intended to provide a financing charge equivalent to that permitted by the regulations in this part as to interest-bearing loans. The acceptance of a voluntary payment of one or more installments prior to due date shall not be construed as increasing the maximum permissible financing charge as provided in this subparagraph. However, if the entire loan is paid in advance, the insured shall make a rebate of the entire unearned financing charge.

(4) Shall provide for such equal monthly payments by the borrower to the insured institution as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums within a period ending 1 month prior to the date on which same become delinquent. In such event the note shall further provide that such payments shall be held by the insured institution in a manner satisfactory to the Commissioner for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower and shall also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more or less than the actual amount thereof so paid by the borrower. If the income of the borrower is derived from the sale of agricultural crops, commodities, or livestock, payments may be seasonal as provided in subparagraph (7) of this paragraph.

(5) May provide for a late charge, to be paid by the maker, not to exceed two cents for each dollar of each installment more than 15 days in arrears. In lieu of late charges, notes may provide for interest on past due installments at a rate not in excess of the contract rate in the jurisdiction in which the note is drawn. No late charge or interest on a past due installment may be accrued in excess of $5.00. The borrower must be billed for the penalties collected as such, and evidence of such billing must be in the file if claim is made under the contract of insurance.

(6) May not provide without the approval of the Commissioner for a first payment less than 6 days nor more than 6 calendar months from the date of the note except as provided in subparagraph (7) of this paragraph and in no case shall provide for more than 240 payments.

(7) May be made payable in installments corresponding to the income periods shown on the credit application if 51 percent or more of the income of the borrower is derived directly from the sale of agricultural crops, commodities, or livestock produced by him. In such cases, the first payment must be made within 12 months of the date of the note and at least one (1) payment must be made during each calendar year thereafter and the proportion of total principal to be paid in later years must not exceed the proportion of total principal payment in earlier years.

(8) Shall contain a provision for acceleration of maturity, either automatic or at the option of the holder, in the event of default in the payment of any installment.

(b) In addition to the maximum permissible financing charge which may be paid by the borrower in connection with a Class 3 loan as provided in paragraph (a)(3) of this section, the following allowable costs or expenses if incurred by the insured institution in connection with the transaction may be collected from the borrower, provided such costs or expenses are not paid from the net proceeds advanced to the borrower:

(1) Recording fees.

(2) Title examination fees.

(3) Fire and other hazard insurance premiums.

(4) An initial service charge in an amount sufficient to reimburse the insured institution for the cost of closing the transaction: *Provided*, That, no such service charge shall exceed 2 percent of the net proceeds of the loan.

(c) The borrower may be required to pay the insured institution upon the closing of the loan a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rent, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the loan to be held by the insured institution for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent for the benefit and account of the borrower.

§ 202.8 Loan procedure.

(a) *Property approval.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan, the borrower shall submit to the insured a description of the property and such plans and specifications as the insured may require in order for the insured to certify to the Commissioner that in its opinion the site is suitable for a home and the proposed structure when completed will not adversely affect surrounding properties. Such property description, plans and specifications shall remain a permanent part of the loan file.

(b) *Appraisal.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan, the insured shall make an estimate of the value of the property, assuming completion of the proposed improvements, and determine that the requirements of § 202.3(b) will be complied with.

(c) *Commissioner's approval on properties for sale or rent.* Prior to beginning construction and to the disbursement of any portion of the proceeds of the loan for any property which is intended for sale or rent, the insured shall submit to the Commissioner a request for preliminary approval of the transaction on a form prescribed by the Commissioner. The approval of the Commissioner provided for in this section shall not relieve the insured from compliance with any regulation.

(d) *Progress payments.* Prior to disbursing the proceeds of the loan or any portion thereof to the borrower or to a creditor for his account, the insured shall satisfy itself that the value of the work done and materials on site at the time of any progress payment, is equal to at least 110 percent of such payment, plus all such progress payments theretofore made. The insured shall not make a disbursement or progress payment to the borrower or to a creditor for his account which would increase the total amount disbursed to a sum in excess of 80 percent of the proceeds of the loan until it has made a final inspection of the property and has approved the work. Whenever it appears to the satisfaction of the insured that completion of the work will be temporarily delayed due to inclement weather, nonavailability of material, or other reason beyond the control of the builder, it may disburse the entire balance remaining of the loan proceeds after deducing and retaining therefrom one and one-half times the amount deemed necessary to complete the work. This retained balance shall not be disbursed until after the work has been inspected and approved by the insured. Notwithstanding any other provision of this section, part or all of the proceeds of the loan may, at any time after the execution of the mortgage instruments by the borrower, be placed in escrow or in a special account for the benefit of the borrower: *Provided*, That disbursements therefrom shall be made only at the time and under the conditions as otherwise prescribed in this section.

(e) *Completion certificate.* Prior to the final disbursement of the proceeds of the loan, the insured shall obtain a completion certificate on a form prescribed by the Commissioner which form shall bear the genuine signature of the borrower certifying that the house is complete and ready for occupancy and that the work has been performed in compliance with the requirements of § 202.4. If, after the loan is made, an insured who acted in good faith discovers any material misstatements or misuse of the proceeds of the loan by the borrower, dealer, or others, the eligibility of the note for

insurance will not be affected. However, the insured shall, in all cases where the insured discovered a material misstatement in the Credit Application, or misuse of the funds, promptly report such a discovery to the Commissioner. A separate certificate shall be executed by the insured certifying that it has made a final inspection of the completed property and that the statements contained in the borrower's completion certificate are correct to the best of its knowledge and belief and that in its opinion the property improved is suitable as a residence and does not adversely affect surrounding properties.

(f) *Substitution of borrowers.* In the event that property covered by a loan is sold to an eligible borrower who assumes and agrees to pay the debt and whose credit is satisfactory to the insured, the seller may be released by the insured from his obligation upon notice thereof to the Commissioner: *Provided,* That, if the loan was secured by a first lien upon a fee simple estate, the loan, after assumption, shall be secured by a first lien on a fee simple interest in the land and building, appurtenances and improvements thereon.

(g) *Loan reports.* Loan shall be reported on the proper form to the Federal Housing Administration at Washington, D.C., within 31 days of the first disbursement of any of the proceeds of the loan or the date upon which it was purchased. Any loan refinanced in accordance with § 202.9 shall be reported on the proper form within 31 days from the date of refinancing. In any case, the Commissioner may in his discretion accept a late report.

§ 202.9 Refinancing.

New obligations to liquidate loans previously reported for insurance pursuant to Title I of the act made after August 19, 1947, which may or may not include an additional amount advanced will be covered by insurance: *Provided,* That:

(a) They meet the requirements of all applicable regulations;

(b) They are reported to the Commissioner on the proper form within 31 days from date of execution;

(c) They have a maturity not in excess of the maximum permitted under the regulations in this part from the date of the refinancing obligation, but not to exceed 30 years from the date of the original mortgage;

(d) If the refinanced obligation was secured by a first lien upon a fee simple estate, the new obligation shall be secured by a first lien upon a fee simple interest in the land and building, appurtenances and improvements thereon.

§ 202.10 Claims.

Claim for reimbursement for loss on a qualified loan shall be made as provided in this section.

(a) *Default reports.* If the borrower fails to make any payment or to perform any other covenant or obligation under the mortgage and such failure continues for a period of 30 days, the mortgage shall be considered in default and the insured shall within 60 days thereafter give notice in writing to the Commissioner of such default, and similar notices each 60 days until such default is cured and notice thereof is given to the Commissioner.

(b) *Foreclosure or acquisition.* At any time within 1 year from the date of default the insured, at its election, shall either:

(1) Acquire by means other than foreclosure of the mortgage, possession of, and title to, the mortgaged property; or

(2) Commerce foreclosure of the mortgage: *Provided,* That if the laws of the State in which the mortgaged property is situated do not permit the commencement of such foreclosure within such period of time, the insured shall commence such foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) Nothing contained in this section shall be construed so as to prevent the insured, with the written consent of the Commissioner, from taking action at a later date than specified in this section.

(c) *Reinstatement.* If after default and prior to the completion of foreclosure proceedings the borrower shall pay to the insured all monthly payments in default and such expenses as the insured shall have incurred in connection with the foreclosure proceedings, no claim for reimbursement under the Contract of Insurance can be made and the insurance shall continue as if such default had not occurred.

(d) *Filing claim.* If the default is not cured as aforesaid, and if the insured has otherwise complied with the provisions of this section, it may at any time within 7 months or such further time as may be approved by the Commissioner, after acquiring title to and possession of the mortgaged property, tender to the Commissioner possession thereof, and a deed containing a covenant which warrants against the acts of the insured and all claiming by, through, or under it, conveying good merchantable title to such property undamaged by fire, earthquake, flood, or tornado. The Commissioner shall promptly accept conveyance of such property and, subject to § 202.12, make payment of loss sustained by the insured as follows:

(1) The net unpaid balance of advance actually made;

(2) Uncollected earned interest to the date of default and interest at the rate of 3 percent per annum from the date of default to the date of the application for reimbursement of loss sustained.

(3) An amount on account of the cost of foreclosure or of acquiring the property by other means actually paid by the insured and approved by the Commissioner not in excess of two-thirds of such cost or seventy-five dollars, whichever is the greater.

(4) The amount of all payments which have been made by the insured for taxes, ground rents, special assessments, and water rates which are liens prior to the mortgage, and fire and hazard insurance premiums.

Any amount received by the insured from any source relating to the property on account of rent or other income, after deducting reasonable expenses incurred in handling the property, shall be deducted from the sum of the foregoing.

(e) *Evidence of title.* Evidence of title of the following types will be satisfactory to the Commissioner:

(1) A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such; or

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

(3) A Torrens or similar title certificate; or

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

Such evidence of title shall be furnished without cost to the Commissioner and shall be executed as of a date to include the recordation of the deed to the Commissioner, and shall show that, according to the public records, there are not, at such date, any outstanding prior liens, except for ground rents and taxes not due and payable and special assessments not in arrears. If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence will be satisfactory to the Commissioner and will be considered by him as good and merchantable.

(f) *Waiver of title objections.* The Commissioner will not object to the title by reason of the following matters, provided they are not such as to impair the value of the property for residence purposes.

(1) Customary easements for public utilities, party walls, driveways and other purposes; customary building or use restrictions for breach of which there is no reversion and which have not been violated to a material extent;

(2) Such restrictions when coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner;

(3) Slight encroachments by adjoining improvements;

(4) Outstanding oil, water, or mineral rights, which do not impair the value of the property for residence purposes, or which are customarily waived by prudent lending institutions and leading attorneys generally in the community.

(g) *Sale and claim for deficiency.* In lieu of the procedure provided for in paragraphs (d) and (e) of this section, the insured, after acquiring title to the property as provided in this section, may at its option and with the approval of the Commissioner, sell the same in the open market to a bona fide third party

at any time within 6 months from the date of such acquisition of the property, or within such further time as may be approved by the Commissioner. The net amount received at such sale, whether in cash or deferred payments, shall be credited on the obligation and claim may be filed with the Commissioner for the balance. Payment of loss sustained by the insured shall be made as follows:

(1) The net unpaid balance of the advance actually made. In calculating the net unpaid amount, the net sale price must be included as a credit.

(2) Uncollected earned interest to the date of default and interest at the rate of 3 percent per annum from the date of default to the date of the application for reimbursement of loss sustained.

(3) An amount on account of the cost of foreclosure or of acquiring the property by other means actually paid by the insured and approved by the Commissioner not in excess of two-thirds of such cost or seventy-five dollars, whichever is the greater.

(4) The amount of all payments which have been made by the insured for taxes, ground rents, special assessments, water rates which are liens prior to the mortgage, fire and hazard insurance premiums, and cost of maintenance and repair of the property. (Claim for the cost of maintenance and repair shall not exceed 10 percent of the net unpaid balance of the advance actually made unless prior approval of the Commissioner has been obtained.) Any amount received by the insured from any source relating to the property on account of rent or other income shall be deducted from the sum of the items referred to in this paragraph.

§ 202.11 Insurance charge.

(a) *Rate.* The insured shall pay to the Administration an annual insurance charge equal to one-half of 1 percent of the original principal amount of any loans reported for insurance.

(b) *When payable.* The first annual insurance charge so calculated shall be paid by check or draft to the order of the Federal Housing Administration within 25 days after the date the Administration acknowledges receipt to the insured of the report of any such loan and the next and each succeeding annual insurance charge shall be paid in advance upon the anniversary of the first day of the month following the date of the mortgage until the loan is paid in full or claim is filed with the Commissioner under the Contract of Insurance.

(c) *Mortgages paid in full.* In the event the loan is paid in full prior to maturity or is foreclosed or the possession of and title to the property is otherwise acquired by the insured, the insured shall within 30 days thereafter notify the Commissioner of the date of prepayment, foreclosure, or acquisition, after which its obligation to pay future annual insurance charges in connection therewith shall cease but it shall not be entitled to a refund of any portion of an annual insurance charge previously paid or a reduction in the amount of any insurance charge, which fell due prior to such prepayment, foreclosure, or acquisition of the property.

(d) *Refinancing.* When the proceeds of any loan are used to liquidate a loan previously reported for insurance, there shall be deducted from the amount of the insurance charge payable the first year the pro rata share of the annual insurance charge paid on the original obligation.

(e) *Transfer of mortgages.* An insured who purchases a mortgage previously reported for insurance shall pay each succeeding annual insurance charge as provided in paragraph (b) of this section. Any adjustment of the insurance charge paid in advance by the seller shall be made between the purchaser and the seller.

(f) *Payment of insurance charge.* Subject to the other provisions of the regulations in this part, the insurance granted under Title I of the National Housing Act, as amended, shall be effective with respect to any loan from the date of the report thereof to the Commissioner: *Provided,* That the insurance charge with respect to such loan is paid as required by this section.

§ 202.12 Insurance reserve.

(a) *Legal limit.* Subject to the limitation on the total liability which may be outstanding at any time as stipulated in section 2 of Title I of the act, the Commissioner, in accordance with § 202.10 (d) and (g), will reimburse any insured for losses sustained by it up to a total aggregate amount equal to 10 percent of the total amount advanced on all eligible loans made by it on and after July 1, 1947, and prior to March 1, 1950, and reported for insurance during the time its contract of insurance is in force.

(b) *General insurance reserve.* There shall be established for each insured a general insurance reserve equal to 10 percent of the aggregate amount advanced on all loans originated by it on and after July 1, 1947, and prior to March 1, 1950, pursuant to the provisions of both this part and Part 201 of this chapter.

(c) *Transfer of loans reported for insurance.* The insured shall not assign or otherwise transfer any loan reported for insurance to a transferee not holding a Contract of Insurance under Title I of the National Housing Act: *Provided,* That nothing contained in this paragraph shall be construed to prevent the pledging of such loans as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(d) *Transfer of insurance reserve.* Insurance reserve of more than $5,000 shall not be transferred to or from the reserve account of any insured during any fiscal year (July 1 through June 30) without the prior approval of the Commissioner. Except in cases involving the transfer of loans sold with recourse or under a guaranty, guarantee, or repurchase agreement, the reports required by § 202.8 shall be submitted, indicating the intent of the parties with respect to the transfer of the insurance reserve and unless the approval of the Commissioner is obtained, the insurance reserve shall be transferred as follows:

(1) In cases involving the transfer of notes purchased without recourse, guaranty, guarantee, or repurchase agreement, provided no instalment payment is past due more than 1 calendar month at the time of purchase, the insurance reserve shall be transferred to the general insurance reserve of the purchasing institution on the basis of 10 percent of the actual purchase price or net unpaid original advance, whichever is the lesser.

(2) In cases involving the transfer of notes sold with recourse or under a guaranty, guarantee, or repurchase agreement, no insurance reserve will be transferred and no reports will be required.

(e) *FHA recovery shall not affect reserve.* Amounts which may be salvaged by the Commissioner with respect to a loan in connection with which an insured has been reimbursed under its contract of insurance shall not be added to the insurance reserve remaining to the credit of such insured.

(f) *Conversion of mortgages.* If at any time a Class 3 loan previously reported for insurance is converted into an insured mortgage under the provisions of another title of the act, upon report of the conversion to the Commissioner, there shall be deducted from the insurance reserve outstanding to the credit of the insured an amount equal to 10 percent of the net unpaid principal of the loan as of the date of the conversion.

§ 202.13 Administrative reports and examination.

The Commissioner, in his discretion, may at any time or from time to time call for a report from any institution on the delinquency status of the obligations held by such institution and reported for insurance, or call for such reports as he may deem to be necessary in connection with the regulations in this part, or he or his authorized representative may inspect the books or accounts of the lending institution as they pertain to the loans reported for insurance.

PART 202a—TITLE I MORTGAGE INSURANCE

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.

202a.251 Incorporation by reference.
202a.255 Due date of initial MIP.
202a.260 Adjustment of initial MIP.
202a.265 Amount of annual MIP.
202a.270 Pro rata adjustment of MIP upon prepayment.
202a.275 Maturity of debentures.

AUTHORITY: The provisions of this Part 202a issued under sec. 2, 48 Stat. 1246, as amended; sec. 8, 64 Stat. 48, as amended; 12 U.S.C. 1703, 1708c.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

§ 202a.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the act apply to mortgages covering individual homes in connection with Title I

mortgage insurance under title I, section 8 of the act, except:

Sec.
203.266 Due date of initial MIP.
203.268 Adjustment of initial MIP.
203.269 Pro rata payment of initial MIP.
203.275 Amount of annual MIP.
203.276 Due date of annual MIP.
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203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to title I, section 8 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 202a.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 202a.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 202a.265 Amount of annual MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid on the anniversary date of the beginning of amortization. It shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

§ 202a.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 202a.275 Maturity of debentures.

Debentures shall mature 3 years after the first day of July following the maturity date of the mortgage.

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

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Sec.
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AUTHORITY: The provisions of this Part 203 issued under secs. 203, 211, 52 Stat. 10, as amended, 23; 12 U.S.C. 1709, 1715b, unless otherwise noted.

Subpart A—Eligibility Requirements

APPROVAL OF MORTGAGEES

§ 203.1 Governmental institutions approved as mortgagees.

The following institutions are hereby approved as mortgagees under section 203 of the National Housing Act:

(a) National Mortgage Associations;

(b) Federal Reserve Banks;

(c) Federal Home Loan Banks; and

(d) Any other Federal, State, or municipal governmental agency that is or may hereafter be empowered to hold mortgages insured under Title II of the National Housing Act as security or as collateral or for any other purpose.

§ 203.2 Federal Reserve members, other institutions.

Members of the Federal Reserve System, institutions whose accounts are insured by the Federal Savings & Loan Insurance Corporation and institutions whose deposits are insured by the Federal Deposit Insurance Corporation may be

approved as mortgagees upon application.

§ 203.3 Charitable or nonprofit institutions.

Any charitable or nonprofit organization, including a pension fund or trust, which presents evidence that it is responsible, has permanent funds of not less than $100,000, and has experience in investment, may be approved upon application.

§ 203.4 Approval of other institutions.

(a) *General requirements.* Any mortgagee not identified in §§ 203.1 to 203.3 may be approved as a mortgagee, if it is a chartered institution; or is a permanent organization having succession; or is a trust. Any such mortgagee shall have sound capital funds properly proportioned to its liabilities and to the character and extent of its operation, and meet the requirements of either paragraph (b), (c) or (d) of this section.

(b) *Special requirements applicable to supervised institutions.* A mortgagee approved as a supervised institution shall meet these requirements:

(1) The mortgagee shall be subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of the mortgagee's books and accounts.

(2) The mortgagee shall submit satisfactory evidence of certain sound capital funds or, if it is a mutual company or association without capital funds, it shall show that it has a specified net worth. The required amount of capital funds or net worth shall be determined in the following manner:

(i) With respect to a mortgagee whose application was filed and approved on or before March 1, 1962, capital funds or net worth of a value of not less than $25,000.

(ii) With respect to a mortgagee whose application for approval was filed on or before March 1, 1962, but not approved until subsequent to such date, capital funds or net worth of a value of not less than $25,000, provided that such amount shall be increased to a value of not less than $100,000 on or before December 31, 1962.

(iii) With respect to a mortgagee filing an application for approval subsequent to March 1, 1962, capital funds or net worth of a value of not less than $100,000.

(c) *Special requirements—nonsupervised institutions.* A mortgagee not subject to inspection and supervision of a governmental agency as provided in the preceding paragraph shall have as its principal activity the lending or investment of funds under its own control in real estate mortgages; shall have sound capital funds of a value of not less than $100,000; shall submit a detailed audit report of its books made by an independent accountant satisfactory to the Commissioner, reflecting a condition satisfactory to him; shall file with the Commissioner similar annual audits within 75 days of the close of its fiscal year so long as its approval as mortgagee continues; shall submit at any time to such examination of its books and affairs as the Commissioner may require; and shall comply with any other conditions that the Commissioner may impose. Prior to the approval of any such mortgagee, it shall submit an agreement in writing:

(1) [Reserved]

(2) That, except with the prior approval of the Commissioner, it will segregate escrow commitment deposits, work completion deposits, and all periodic payments under mortgages insured by the Commissioner, received by it on account of ground rents, taxes, assessments, and insurance premiums, and will deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation and shall use such funds for no purpose other than that for which they were received.

(d) *Special requirements—loan correspondent mortgagees.* Requirments for approval as a loan correspondent mortgagee are identical with those for approval of nonsupervised mortgagees, except as follows:

(1) It may be approved with sound capital funds (net worth) of not less than $5,000;

(2) It shall be an authorized loan correspondent of, and its approval requested by, an approved mortgagee under governmental supervision, which is investing in insured mortgages for its own portfolio and whose past and future investment commitments are such as to assure the Commissioner enough business will be originated to enable the correspondent to successfully maintain its servicing accounts;

(3) It shall originate or purchase insured loans for sale only to its sponsor or sponsors;

(4) It, and its sponsor or sponsors shall agree to notify the Commissioner promptly upon termination of the loan correspondent agreement;

(5) Termination of the relationship with sponsor or sponsors will be cause for withdrawal of the loan correspondent mortgagee approval.

(e) *Special requirements—investing mortgagees.* (1) An organization not subject to the inspection and supervision of a government agency as provided in paragraph (b) of this section may be approved as an investing mortgagee.

(2) To be approved as an investing mortgagee, an organization shall establish to the satisfaction of the Commissioner that it meets the following requirements:

(i) It has experience in making investments in mortgages.

(ii) It has a supply of capital funds sufficient to support a projected investment of $1 million in real estate mortgages.

(iii) It has a sound financial condition.

(3) As a condition for receiving approval, an investing mortgagee shall agree as follows:

(i) To obtain insured mortgages, not by origination, but only by purchase from other investing mortgagees or from mortgagees authorized by the Commissioner to originate mortgages.

(ii) To arrange with mortgagees which are approved pursuant to § 203.1, § 203.2, or paragraph (b) or (c) of this section to service all mortgages acquired by the investing mortgagee and to hold all escrow funds collected in connection therewith.

(iii) To submit to the Commissioner annual independent audit reports of its financial condition within 75 days of the close of its fiscal year so long as it is an approved investing mortgagee.

(iv) To submit at any time to such examination, as the Secretary may require, of that portion of its books and affairs relating to its mortgage investment activities.

(v) To comply with such other requirements as the Commissioner may impose.

§ 203.6 Approval of fiduciary investments.

(a) Approval as a mortgagee of a banking institution or trust company which is subject to the inspection and supervision of a governmental agency, shall be deemed to constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, whether by revocation or otherwise, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 203.7 Withdrawal of approval.

(a) Approval of a mortgagee may be withdrawn at any time by notice from the Commissioner, by reason of:

(1) The transfer of an insured mortgage to a nonapproved mortgagee, except pursuant to § 203.433 or 203.435 of this part.

(2) The failure of a nonsupervised mortgagee to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, and to deposit such funds to a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation;

(3) The use of escrow funds for any purpose other than that for which they were received;

(4) The failure of a non-supervised mortgagee to conduct its business in accordance with the plan indicated by its application for approval;

(5) The termination of a mortgagee's supervision by a governmental agency;

(5a) The failure of a nonsupervised mortgagee or an investing mortgagee to submit the required annual audit report of its financial condition within 75 days of the close of its fiscal year or such longer period as the Commissioner may determine.

(6) Such other reason as the Commissioner determines to be justified.

(b) Withdrawal of a mortgagee's approval shall not affect the insurance on mortgages accepted for insurance.

(Sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713).

§ 203.8 Financial statements.

All approved mortgagees shall at any time upon request furnish the Commissioner with a copy of their latest periodic financial statement or report.

§ 203.9 Mortgage servicing.

All approved mortgagees are required to service insured loans in accordance with acceptable mortgage practices of prudent lending institutions. In the event of default, the mortgagee should be able to contact the mortgagor and otherwise exercise diligence in collecting the amounts due. The holder of the mortgage is responsible to the Commissioner for proper servicing, even though the actual servicing may be performed by an agent of such holder.

APPLICATION AND COMMITMENT

§ 203.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage about to be executed, or of a mortgage already executed.

§ 203.11 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

§ 203.12 Application and commitment extension fees.

(a) *Application fee.* (1) *Amount of fee.* The mortgagee shall pay an application fee to cover the cost of processing. The fee shall be as follows:

(i) $40 for an application involving existing construction.

(ii) $50 for an application involving proposed construction.

(iii) $10 for an application involving a mortgage of the character described in § 203.43(b) (3) and (4).

(iv) $10 for an application processed under the Certified Agency Program.

(v) $15 for an application filed on or after July 1, 1969, which involves property, which respect to which the Veterans Administration has issued a Certificate of Reasonable Value, if the mortgagee submits with the application evidence, satisfactory to the Commissioner, that such Certificate is outstanding and has not expired.

(2) *Time of fee payment.* The application fee shall be due and payable by the mortgagee upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the mortgagee for an application fee previously charged under such conditions as the Commissioner prescribes.

(4) *Fee not required.* A mortgagee shall not be required to pay an application fee where:

(i) The application is not accepted for processing; or

(ii) The application is made on behalf of a veteran for the insurance of a mortgage to refinance an existing insured mortgage which is in default by reason of his military service, if the Commissioner finds that the charging of such fee would be inequitable under the circumstances of the transaction. For the purposes of this subdivision the word "veteran" shall mean a person who has 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; or

(iii) The application is in connection with the insurance of a mortgage to finance the purchase of Commissioner-held property.

(b) *Commitment extension fee*—(1) *Amount of fee.* The mortgagee shall pay a commitment extension fee for extending an outstanding commitment or for reopening and extending an expired commitment within two months after such expiration. The fee shall be as follows:

(i) $25 where the commitment involves existing construction or proposed construction.

(ii) $10 where the commitment involves a mortgage of the character described in § 203.43(b) (3) and (4).

(2) *Time of fee payment.* The commitment extension fee shall be due and payable by the mortgagee upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the mortgagee for a commitment extension fee previously charged under such conditions as the Commissioner prescribes.

(4) *Fee not required.* A mortgagee shall not be required to pay a commitment extension fee where:

(i) The commitment to be extended or reopened is in connection with an application made on behalf of a veteran under circumstances set forth in paragraph (a) (4) (ii) of this section; or

(ii) The commitment is in connection with the insurance of a mortgage to finance the purchase of Commissioner-held property.

(Sec. 234, 75 Stat. 160; 12 U.S.C. 1715y)

§ 203.13 Approval of application.

Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 203.14 Builders warranty.

With respect to commitments issued on or after October 1, 1954, applications relating to proposed construction 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 a warranty in form satisfactory to the Commissioner warranting that the dwelling is 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. 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.

§ 203.15 Certification of appraisal amount.

An application with respect to insurance of mortgages on one- or two-family dwellings must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the purchaser of such property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.

Every application filed with respect to insurance of mortgages on a two-, three-, or four-family dwelling, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must be accompanied by a contract in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

ELIGIBLE MORTGAGES

§ 203.17 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner. 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.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in multiples of $50.

(c) *Payments.* The mortgage shall:

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

(2) Have an amortization period of either 10, 15, 20, 25, 30, or 35 years by providing for either 120, 180, 240, 300, 360, or 420 monthly amortization payments.

(3) 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.

(d) *Maturity.* (1) The mortgage shall have a maturity as set forth in subparagraph (2) or (3) of this paragraph, whichever is the lesser.

(2) The mortgage shall have a maturity not in excess of three-quarters of the remaining economic life of the building improvements.

(3) The mortgage shall have a term of not less than 10 nor more than:

(i) Thirty years from the date of the beginning of amortization; or

(ii) Thirty-five years from the date of the beginning of amortization if the following requirements are met:

(*a*) The mortgagor is an owner occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period;

(*b*) The dwelling was approved for mortgage insurance by the Commissioner prior to the beginning of construction or approved for guaranty, insurance or direct loan by the Administrator of Veterans Affairs prior to such construction; and

(*c*) The dwelling was inspected by the FHA and found to have been completed in compliance with the terms of the FHA commitment, or inspected by the VA and found to have been completed in compliance with the terms of the VA Certificate of Reasonable Value.

§ 203.13 Maximum mortgage amounts.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the property shall not exceed the lesser of the amounts in subparagraphs (1) and (2) or (1) and (3) of this paragraph as follows:

(1) *Dollar limitation.* A dollar limitation of:

(i) $33,000 for a one-family residence.

(ii) $35,750 for a two-family residence.

(iii) $35,750 for a three-family residence.

(iv) $41,250 for a four-family residence.

(2) *Loan-to-value limitation—approval prior to construction.* If the mortgage covers a dwelling approved for mortgage insurance (or for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs) prior to the beginning of construction or a dwelling which was completed more than 1 year preceding the date of the application for mortgage insurance, the sum of the following percentages of the Commissioner's appraised value of the property, as of the date the mortgage is accepted for insurance:

(i) 97 percent of the first $15,000 of such value (100 percent of $15,000 of such value or the sum of such value not in excess of $15,000 and the items of prepaid expense approved by the Commissioner minus $200, whichever appraisal amount or sum is the lesser, in the case of a mortgagor qualifying as a veteran).

(ii) 90 percent of such value in excess of $15,000, but not in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of such value in excess of $25,000.

(3) *Loan-to-value limitation—no prior approval.* A loan-to-value limitation of 90 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of such value in excess of $25,000, if the dwelling does not meet the requirements in the introductory text of subparagraph (2) of this paragraph.

(b) *Veteran qualifications.* The special veteran terms provided in paragraph (a) of this section shall only be applicable to a mortgage covering a single family dwelling executed by a mortgagor who submits to the Commissioner one of the following certifications:

(1) A Certificate of Veteran Status from the Veterans Administration establishing that he has served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States and the Air National Guard of the United States) of the United States and was discharged or released therefrom under conditions other than dishonorable.

(2) A certificate issued by the Secretary of Defense establishing that the mortgagor performed extra hazardous service while serving in the armed forces for a period of less than 90 days.

(c) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the property shall not exceed:

(1) 85 percent of any amount computed under paragraph (a) of this section; or

(2) The full amount computed under paragraph (a) of this section if the mortgage covers a one- or two-family residence and the Commissioner is furnished with certificates indicating that:

(i) [Reserved]

(ii) 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 prior to the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(iii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iv) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

(v) [Reserved]

(vi) 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, shall be deducted from the amount of debentures to which the mortgagee would otherwise be entitled if a claim for debentures is filed.

(d) *Outlying area properties.* A mortgage covering a single-family residence located in an area where the Commissioner finds it is not practicable to obtain conformity with many of the requirements essential to insurance of mortgages in built up urban areas, or to be used as a farm home on a plot of land, five or more acres in size, adjacent to a public highway, shall not exceed:

(1) $16,200.

(2) 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, if:

(i) The dwelling was approved for insurance by the Commissioner prior to the beginning of construction; or

(ii) Construction was completed more than one year preceding the date of the application for insurance; or

(iii) The dwelling was approved for guaranty, insurance, or direct loan by the Administrator of Veterans Affairs prior to the beginning of construction.

(3) 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance in the case of all properties not meeting the requirements of subparagraph (2) of this paragraph; and

(4) 85 percent of the appraised value of the property if the mortgagor is not an occupant thereof.

(e) *Disaster victims.* A mortgage covering a single-family dwelling, in an amount not in excess of $14,400 or the appraised value of the property as of the date the mortgage is accepted for insurance, whichever is the lesser, shall be eligible for insurance if:

(1) The mortgage is executed by a mortgagor who will occupy the dwelling;

(2) The mortgagor establishes that the home which he previously occupied as owner or tenant was destroyed or damaged to such an extent that reconstruction or replacement is required as a result of a flood, fire, earthquake, storm or other catastrophe which the President has determined to be a major disaster; and

(3) The application for insurance is filed within one year from the date of such Presidential determination, or within such additional period of time as the period of Federal assistance with respect to such disaster may be extended.

(f) *Seasonal homes.* A mortgage covering a family residence designed for seasonal (rather than year-round) occupancy shall involve a principal obligation not in excess of $18,000, and not in excess of 75 percent of the appraised value of the property.

§ 203.19 Mortgagor's minimum investment.

(a) At the time the mortgage is insured, the mortgagor shall have paid in cash or its equivalent the following minimum amount:

(1) In all cases (except those involving a veteran meeting the requirements of § 203.18(a)(3)), the minimum investment shall be at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine.

(2) In a case involving a veteran meeting the requirements of § 203.18(a)(3), the minimum investment shall be $200 which may include settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

(b) A mortgagor who is 60 years of age or older, as of the date the mortgage is accepted for insurance, or whose mortgage meets the requirements of and is to be insured pursuant to § 203.18(d), or who is purchasing a single-family home under a low income housing demonstration project which is being assisted by the Secretary of Housing and Urban Development pursuant to section 207 of the Housing Act of 1961, may obtain a loan to meet the payment required by paragraph (a) of this section and to pay settlement costs. Such loan shall be from a corporation or person satisfactory to the Commissioner. The settlement costs paid with the loan may include initial payments for taxes, hazard insurance premium, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner. As security for the loan, the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance premium, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner.

(c) In a case involving the insurance of a mortgage on a seasonal home, the minimum investment shall be at least 25 percent of the appraised value of the property.

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 203.21 Amortization provisions.

The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 203.22 Payment of insurance premiums or charges; prepayment premiums.

(a) The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage should provide that upon the payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in this subchapter, but shall not provide for the payment of any further charge on account of such prepayment.

§ 203.23 Mortgagor's payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments and insurance premiums before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) Mortgages involving a principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

§ 203.24 Application of payments.

(a) All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance, including insurance charges for open-end advances;

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

(3) Interest on the mortgage; and

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payment, constitute an event of default under the mortgage.

§ 203.25 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 203.26 Mortgagor's payments when mortgage is executed.

The mortgagor must pay to the mortgagee, upon the execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment.

§ 203.27 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) The application fees provided for in this part.

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater; or

(ii) $50 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

(iii) If the mortgage involves repair or rehabilitation, and the mortgagee meets the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, the charge prescribed in subdivision (ii) of this subparagraph may be collected in connection with that portion of the mortgage applied to such repair or rehabilitation. The charge with respect to any part of the mortgage not applied to repair or rehabilitation, or any part of the mortgage so applied which does not meet the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, shall be limited to that provided in subdivision (i) of this subparagraph.

(3) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor:

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts if the mortgagor is:

(i) A builder constructing houses for sale who executes the mortgage in his own name;

(ii) Constructing a dwelling for his own occupancy; or

(iii) Refinancing an existing indebtedness secured by the property owned by the mortgagor.

(iv) Purchasing the property from a governmental agency or municipal corporation which is precluded by statute from paying the discount.

(v) A builder or realtor who is purchasing a dwelling from an owner-occupant.

(b) [Reserved]

(c) [Reserved]

(d) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing any charge, fee or discount collected by the mortgagee from the mortgagor. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(e) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

§ 203.28 Economic soundness of projects.

The mortgage must be executed with respect to a project which, in the opinion of the Commissioner, is economically sound, except that this section shall not apply in each of the following instances:

(a) To a mortgage of the character described in § 203.18(d) and with respect to such a mortgage, the Commissioner shall determine that the mortgage is an acceptable risk giving consideration to the need for providing adequate housing for families of low and moderate income, particularly in suburban and outlying areas or small communities.

(b) To a mortgage of the character described in § 203.18(e).

(c) To a mortgage of the character described in § 203.43a.

(d) To a mortgage of the character described in § 203.43b.

§ 203.29 Eligible mortgages in Alaska, Guam, or Hawaii.

(a) If the Commissioner finds that because of high costs in Alaska, Guam or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this subpart the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(b) If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

(c) The provisions of § 203.28 requiring economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam or in Hawaii.

§ 203.30 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 203.31 Owner-occupancy in military service cases.

Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance, where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

Eligible Mortgagors

§ 203.32 Mortgage lien.

A mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 203.33 Relationship of income to mortgage payments.

A mortgagor must establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 203.34 Credit standing.

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

§ 203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.

A mortgagor under a mortgage covering two-, three-, or four-family dwellings, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same mortgagor, must certify under oath that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. The mortgagor shall further execute a contract with the Commissioner providing

that so long as the said mortgage is insured he will not rent such housing, or any part thereof, for transient or hotel purposes as such purposes are defined in § 203.16.

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 with a period of not less than 50 years to run from the date the mortgage is executed.

§ 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families. Such unit may be connected with other dwellings by a party wall or otherwise.

§ 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, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

§ 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 said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties:

Provided, That with respect to applications received by the Commissioner on or after August 31, 1955, the number of dwelling units referred to in this paragraph shall be reduced to eight.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a 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 such dwelling is subject to any insured mortgage.

§ 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 Laws 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 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, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, 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, Washington, 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 (as defined in § 203.12) their families and others: *Provided,* That the principal obligation of a mortgage referred to in this subparagraph 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 subparagraphs (1), (2), (3), and (4) of this paragraph; or

(7) Given to refinance an existing mortgage which is insured under the act. The amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage. It shall have a maturity limited to the unexpired term of the existing mortgage.

(c)–(f) [Reserved]

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

(h) The provisions of § 203.33 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) [Reserved]

(j) Notwithstanding the provisions of § 203.12(a), in connection with mortgages on properties located within the Boulder City municipal areas as provided in subparagraph (3) and mortgages of the character described in subparagraph (4) of paragraph (b), applications for commitments shall be accompanied by the mortgagee's check for the sum of $10 to cover the cost of processing by the Commissioner. If an application is refused as a result of preliminary examination by the Commissioner, or in such other instances as the Commissioner may determine, the entire fee will be returned to the applicant.

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

§ 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.

§ 203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.

(a) A mortgage covering a family residence designed for seasonal (rather than year-round) occupancy shall be eligible for insurance if the following additional requirements are met:

(1) The mortgage shall cover a single-family dwelling, approved for insurance prior to the beginning of construction, which is to be occupied by the mortgagor.

(2) The dwelling shall meet such minimum standards as the Secretary may prescribe for dwellings for seasonal use.

(3) The dwelling shall be located in an area where the Secretary finds it is not practicable to obtain conformity with standards prescribed for mortgage insurance in urban areas.

(4) The mortgage shall be an acceptable risk, giving consideration to the economic potential of the area in which the dwelling is located and the contribution that the housing will make to the area.

(5) The mortgage shall cover a dwelling on property that is being developed in a manner consistent with the conservation of the natural resources of the area in which the property is located.

(b) The Secretary may suspend the issuance of commitments for mortgage insurance under this section for such areas as he may designate if he makes the following determinations:

(1) There is a serious and unusual shortage of mortgage funds for residential construction in the designated area.

(2) Insurance of mortgages on properties intended for seasonal occupancy would materially and adversely affect the availability of mortgage funds for residential construction in the designated area.

(3) Such suspension would not have an adverse effect on the balanced economic development of the designated area.

OPEN-END ADVANCES

§ 203.44 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant. A commitment extension fee of $10 shall be remitted by the mortgagee with a request for extending an outstanding commitment or for reopening and extending an expired commitment within two months after such expiration.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in § 203.307. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided,* That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of § 203.18 or § 203.43.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

INSURED HOME IMPROVEMENT LOANS

§ 203.50 Definitions.

As used in §§ 203.50 et seq. the term:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(c) "Loan" means an advance of funds or credit evidenced by a note secured by a security instrument.

(d) "Note" means a note or other evidence of indebtedness executed, upon a form approved by the Commissioner, for use in the jurisdiction where the loan is disbursed.

(e) "Outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(f) "Lender" means an approved financial institution eligible for insurance under section 203(k) of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

§ 203.51 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 and 203.6 shall be eligible for insurance of home improvement loans under §§ 203.50 et seq.

§ 203.52 Withdrawal of approval.

(a) Approval of a lender shall be considered as withdrawn where the Commissioner notifies the lender of a withdrawal of its approval as a mortgagee under Title II of the Act.

(b) Withdrawal of approval of a lender shall not affect the insurance on loans accepted for insurance.

§ 203.53 Financial statements.

The lender shall at any time upon request furnish the Commissioner with a copy of its latest periodic financial statement or report.

§ 203.54 Loan servicing.

The lender shall service insured loans in accordance with acceptable loan practices of prudent lending institutions. In the event of default, the lender shall be able to contact the borrower and otherwise exercise diligence in collecting the amounts due. The holder of the loan shall be responsible to the Commissioner for proper servicing, even though the ac-

tual servicing may be performed by an agent of the holder.

§ 203.55 Form of application.

The application shall be made on a form prescribed by the Commissioner.

§ 203.60 Application and commitment extension fees.

(a) *Application fee*—(1) *Amount of fee.* The lender shall pay an application fee of $20 to cover the cost of processing.

(2) *Time of fee payment.* The application fee shall be due and payable by the lender upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the lender for an application fee previously charged under such conditions as the Commissioner prescribes.

(4) *Fee not required.* A lender shall not be required to pay an application fee where the application is not accepted for processing.

(b) *Committment extension fee*—(1) *Amount of fee.* The lender shall pay a commitment extension fee of $20 for extending an outstanding commitment or for reopening and extending an expired commitment with two months after such expiration.

(2) *Time of fee payment.* The commitment extension fee shall be due and payable by the lender upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the lender for a commitment extension fee previously charged under such conditions as the Commissioner prescribes.

§ 203.61 Issuance of commitment.

Upon approval of an application, the Commissioner shall issue a commitment setting forth the terms and conditions upon which the loan will be insured, including the extent and nature of the security required for the loan.

§ 203.62 Note and security form.

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

§ 203.63 Disbursement of proceeds.

Prior to endorsement, the entire principal amount of the loan shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 203.64 Loan multiples.

The loan shall involve a principal obligation in multiples of $50.

§ 203.65 Loan payments.

The loan payment shall come due on the first of the month.

§ 203.70 Maturity of loan.

The loan shall have a maturity satisfactory to the Commissioner not less than 5 nor more than 20 years from the date of the beginning of amortization or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

§ 203.71 Loan amortization period.

The loan shall have an amortization of either 5, 7, 10, 12, 15, 17, or 20 years by providing for either 60, 84, 120, 144, 180, 204, or 240 monthly amortization payments.

§ 203.72 Beginning of payments.

The loan shall provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

§ 203.73 Maximum loan amounts.

(a) The loan shall not exceed:

(1) The Commissioner's estimate of the cost of improvements or $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in § 203.18 for mortgages on properties of the same type other than new construction; or

(3) Where the proceeds are to be used for the purposes indicated in § 203.82 (a) (2), an amount which when added to the aggregate principal balance of any outstanding insured home improvement loans which were obtained for the purposes indicated in § 203.82(a) (2), creates an aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds cost levels so require, he may increase by not to exceed 45 percent the $12,000 per family unit limitation set forth in paragraphs (a) (1) and (3) of this section.

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7 percent, except that where an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application.

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

§ 203.75 Amortization provisions.

The loan shall contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the borrower not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 203.80 Payment of insurance premiums or charges.

(a) The security instrument shall provide for monthly payments by the borrower to the lender of an amount equal to one-twelfth of the annual insurance premium payable by the lender to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The loan shall contain a provision permitting the loan to be prepaid in whole or in part upon any interest payment date after giving the lender 30 days advance written notice. No penalty or charge shall be imposed by the lender on account of such prepayment.

§ 203.81 Application of payments.

(a) All monthly payments to be made by the borrower to the lender shall be added together and the aggregate amount thereof shall be paid by the borrower each month in a single payment. The lender shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

(2) Interest on the loan; and

(3) Amortization of the principal of the loan.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the borrower prior to, or on, the due date of the next such payment, constitute an event of default under the loan.

§ 203.82 Use of proceeds.

(a) The proceeds of the loan shall be used only for the following purposes:

(1) To finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling, or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(2) The pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other public improvements, adjacent to or in the vicinity of the borrower's property, which is assessed against the borrower or for which he is otherwise legally liable as the property owner.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a) of this section.

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used upon completion of the improvements, primarily for residential purposes by not more than four families; and

(2) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which are

not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 203.83 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved shall be owned by the borrower, or be leased by the borrower under a lease for not less than 99 years which is renewable, or be under a lease with an expiration date in excess of 10 years later than the maturity date of the loan.

§ 203.86 Credit standing.

The borrower shall have a general credit standing satisfactory to the Commissioner.

§ 203.90 Relationship of income to loan payments.

The borrower shall establish that the periodic payments required in the loan submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 203.91 Certification as to outstanding indebtedness relating to the property.

The loan application shall be accompanied by a certificate by the borrower, on a form prescribed by the Commissioner setting forth the total amount of outstanding indebtedness relating to the property.

§ 203.92 Certificate of nondiscrimination by borrower.

The borrower shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the loan to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 203.93 Certificate and contract regarding use of dwelling for transient or hotel purposes.

An application filed with respect to insurance of a loan on a two-, three-, or four-family dwelling, or a single-family dwelling which is one of a group of 5 or more single-family dwellings held by the same borrower, shall be accompanied by a contract in form satisfactory to the Commissioner signed by the proposed borrower agreeing that so long as the loan is insured by the Commissioner the borrower will not rent the housing or any part thereof covered by the loan for transient or hotel purposes, together with the borrower's certification under oath that the housing or any part thereof covered by the proposed loan will not be rented for transient or hotel purposes. For the purpose of §§ 203.50 et seq. rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

§ 203.94 Acceptable risk.

The loan transaction shall, in the opinion of the Commissioner, constitute an acceptable risk.

§ 203.95 Owner-occupancy in military service cases.

Any loan otherwise eligible for insurance under the provisions of §§ 203.50 et seq., may be insured without regard to any requirement that the borrower be the occupant of the property at the time of insurance, where the Commissioner is satisfied that the inability of the borrower to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the borrower expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

§ 203.100 Charges and fees to lender from borrower.

The lender may collect from the borrower the following charges and fees:

(a) *Application fee.* The application fee provided for in this subchapter.

(b) *Originating and closing charge.* (1) A charge to compensate the lender for expenses incurred in originating and closing the loan, the charge not to exceed $20 or one percent of the original principal amount of the loan, whichever is greater.

(2) A charge to compensate the lender for expenses incurred in originating and closing the loan, the charge not to exceed $50 or 2½ percent of the original principal amount of the loan, whichever is greater, where the lender makes partial disbursements and inspections of the property during the period the improvements are being completed.

(3) The provisions of subparagraph (2) shall be applicable only to commitments issued pursuant to applications filed for insurance after October 31, 1962.

(c) *Amounts for other items.* Reasonable and customary amounts for any of the following items:

(1) Recording fees and recording taxes or other charges incident to recording security.

(2) Credit report.

(3) Title examination.

(4) Title insurance.

(5) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

§ 203.101 Report and approval of charges and fees.

Prior to insurance of any loan, the lender shall furnish to the Commissioner a signed statement in a form satisfactory to the Commissioner listing any charges or fees collected by the lender from the borrower. The Commissioner's endorsement of the note for insurance shall constitute approval of the listed charges or fees.

§ 203.102 Late charge.

The loan may provide for the collection by the lender of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

EFFECTIVE DATE

§ 203.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

DEFINITIONS

§ 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

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

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) [Reserved]

(h) [Reserved]

(i) "Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument for insurance by the Commissioner.

(j) "Contract of Insurance" means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

(k) "MIP" means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l) "Adjusted mortgage insurance premium" means the premium paid by the mortgagee to the Commissioner in consideration of termination of the contract of insurance by reason of prepayment in full of the mortgage.

(m) "Termination charge" means the charge paid by the mortgagee to the Commissioner in consideration of terminating the contract of insurance pursuant to the joint request for such action made by the mortgagor and mortgagee.

(n) "Open-end advance" means an insured advance made by an approved mortgagee in connection with a previously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) "Open-end insurance charge" means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(q) "Maturity" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) "Debentures" means registered, transferable securities which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

ENDORSEMENT AND CONTRACT OF INSURANCE

§ 203.255 Insurance of mortgage.

Upon compliance with a commitment the Commissioner will insure the loan evidencing the insurance by the issuance of a Mortgage Insurance Certificate or by an appropriate panel or endorsement placed on the original credit instrument, which will identify the regulations under which the loan is insured and the date of insurance.

§ 203.256 Insurance of open-end advance.

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

§ 203.257 Contract created by Mortgage Insurance Certificate or by endorsement.

The mortgage, including any open-end advances made thereunder and approved by the Commissioner, shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate or from the date of the endorsement of the credit instrument. The Commissioner and the mortgagee shall thereafter be bound by the regulations in this part with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

MORTGAGE INSURANCE PREMIUMS—IN GENERAL

§ 203.260 Method of payment of MIP.

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

§ 203.261 Calculation of MIP.

The amount of any MIP shall be calculated in accordance with the amortization provisions of the mortgage, without taking into account delinquent payments or prepayments.

INITIAL MORTGAGE INSURANCE PREMIUM

§ 203.265 Amount of initial MIP.

The initial MIP shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage, without taking into account delinquent payments or prepayments.

§ 203.266 Due date of initial MIP.

The initial MIP shall be paid on the first aniversary date of the beginning of amortization following the date on which the insurance becomes effective by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument.

§ 203.267 Period covered by initial MIP.

The initial MIP shall cover the period beginning with the date of the issuance of a Mortgage Insurance Certificate or the date of the endorsement of the credit instrument and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve-month period following each anniversary date.

§ 203.268 Adjustment of initial MIP.

Regardless of whether the period covered by the initial MIP is more or less than one year, payment shall be made to the Commissioner on account of the initial MIP in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than ½ percent or more than one percent of the outstanding principal balance, without taking into account delinquencies or prepayments, the initial MIP shall be adjusted to accord with the prescribed limitations. If such payment is within the prescribed limitations no adjustment shall be made and the amount of the payment shall be paid to the Commissioner as the initial MIP.

§ 203.269 Pro rata payment of initial MIP.

If termination of the contract of insurance occurs before the due date of the initial MIP, the mortgagee shall pay to the Commissioner (in addition to any adjusted premium or termination charge) the portion of the initial premium due to the first of the month following the effective termination date, which shall be computed from:

(a) The beginning of amortization, if the issuance of a Mortgage Insurance Certificate or the endorsement of the credit instrument occurred within six months after the beginning of amortization; or

(b) The date of the issuance of a Mortgage Insurance Certificate or the endorsement of the credit instrument, if either occurred any time prior to the beginning of amortization, or during the second half of any amortization year.

ANNUAL MORTGAGE INSURANCE PREMIUM

§ 203.275 Amount of annual MIP.

After payment of the initial MIP an annual MIP shall be paid in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

§ 203.276 Due date of annual MIP.

After payment of the initial MIP an annual MIP shall be paid on each anniversary date of the beginning of amortization.

§ 203.277 Duration of annual MIP.

After payment of the initial MIP, the mortgagee shall pay an annual MIP to the Commissioner until:

(a) The mortgage is paid in full; or

(b) The deed to the Commissioner is filed for record; or

(c) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.278 Pro rata payment of annual MIP.

(a) *In general.* If the insurance contract is terminated after the due date of the initial MIP, the mortgagee shall pay to the Commissioner (in addition to any adjusted premium or termination charge) that portion of the current annual MIP prorated from the due date of the last annual MIP through the end of the month in which the contract of insurance is terminated. The pro rata payment of MIP shall be remitted to the

Commissioner with the notice of prepayment or request for voluntary termination.

(b) *Computation of pro rata annual MIP.* For the purpose of computing the pro rata portion of the annual MIP, the date of termination of insurance shall be the last day of the month in which the mortgage was prepaid or a voluntary termination request is received by the Commissioner.

(c) *Exception to payment of pro rata annual MIP.* A pro rata MIP shall not be due or payable where the mortgagee notifies the Commissioner that foreclosure or other action to acquire the property has been completed and that the property will not be conveyed to the Commissioner in exchange for insurance benefits. Any MIP due and paid after the institution of foreclosure or the date the property was otherwise acquired by the mortgagee will be refunded to the mortgagee upon receipt by the Commissioner of the notice from the mortgagee that the property will not be conveyed to the Commissioner.

ADJUSTED MORTGAGE INSURANCE PREMIUM

§ 203.285 Computation of adjusted premium.

(a) Where the principal obligation of any mortgage accepted for insurance is paid in full before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayment, the mortgagee shall pay to the Commissioner an adjusted premium of 1 percent of the original principal amount of the prepaid mortgage, except as otherwise provided in this subpart.

(b) The adjusted premium shall be remitted to the Commissioner with the notice of prepayment. Payment shall be made either in cash or debentures at par plus accrued interest.

§ 203.286 Maximum adjusted MIP.

No adjusted premium shall exceed the aggregate amount of MIP which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 203.287 Prepayments excepted from adjusted premium charge.

No adjusted premium charge shall be due or payable to the Commissioner in each of the following instances:

(a) *New insured mortgage.* Where the insured mortgage is paid in full with or from the proceeds of a loan secured by a new mortgage on the same property which is insured by the Commissioner.

(b) *Acceleration by partial prepayments.* Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage, plus 15 percent of the original face amount of any open-end advances; or

(c) *Acceleration by payments for damages.* Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property; or

(d) *Acceleration by partial release.* Where the final maturity specified in the mortgage is accelerated solely by reason of payment to principal to compensate for release of a part of the insured property approved by the Commissioner; or

(e) *Acceleration by application of escrow funds.* Where the final maturity specified in the mortgage is accelerated solely by reason of application of funds applied on the indebtedness as required by the Commissioner pursuant to an approved escrow; or

(f) *Payment involving condemnation proceedings.* Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for the conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(g) *Payment involving foreclosure.* Where payment in full is made of a delinquent mortgage:

(1) On which foreclosure proceedings have been commenced; or

(2) For the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner; or

(h) *Payment under court order.* Where payment in full is made pursuant to a court order; or

(i) *Sale of property to veterans.* Where payment in full is made within 60 days after the date the mortgage is endorsed for insurance, provided the mortgagee submits to the Commissioner a certificate signed by the mortgagor certifying that such payment was made in connection with the sale of the property to a veteran for his occupancy as a home.

(j) *Payment after 10 years.* Where payment in full is made after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

(k) *Payment by HUD direct loan.* Where the mortgage is paid in full from the proceeds of a direct loan granted under a program administered by the Department of Housing and Urban Development.

VOLUNTARY TERMINATION CHARGE

§ 203.295 Voluntary termination of insurance.

Upon request by the mortgagor and mortgagee and submission of the Mortgage Insurance Certificate for cancellation or the mortgage note for cancellation of the endorsement, the Commissioner may terminate the insurance contract on any mortgage under this part covering a one- to four-family residence.

§ 203.296 Computation of voluntary termination charge.

In the event the Commissioner receives a request for voluntary termination of the insurance contract before the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments, the mortgagee shall pay to the Commissioner a termination charge equal to one percent of the original principal amount of the mortgage, except as otherwise provided in this subpart. The termination charge shall be remitted to the Commissioner with the request for voluntary termination.

§ 203.297 Maximum voluntary termination charge.

In no event shall the charge for voluntary termination of the insurance contract exceed the aggregate amount of MIP which would have been payable if the mortgage had continued to be insured until the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

§ 203.298 Exception from voluntary termination charge.

The insurance contract may be voluntarily terminated without payment of a termination charge if:

(a) The mortgage is delinquent and termination of insurance is for the purpose of avoiding foreclosure provided the transaction is approved by the Commissioner; or

(b) Foreclosure proceedings have been instituted.

(c) The request for voluntary termination of the contract of insurance is received by the Commissioner after the due date of the 120th scheduled monthly payment, without taking into account delinquent payments or prepayments.

OPEN-END INSURANCE CHARGE

§ 203.305 Open-end advance subject to open-end charge.

In the case of an insured open-end advance the mortgagee shall pay to the Commissioner, in addition to the regular MIP, an open-end insurance charge.

§ 203.306 Method of payment of open-end charge.

The payment of any open-end insurance charge under this subpart shall be made to the Commissioner by the mortgagee either in cash or debentures issued by the Mutual Mortgage Fund at par plus accrued interest.

§ 203.307 Calculation, amount, and due date of open-end charge.

The open-end insurance charge shall be in an amount equal to ½ percent per annum of the original principal obligation of the open-end advance and shall be payable on the same dates as the MIP. The initial open-end insurance charge shall be prorated to cover the period beginning with the first day of the month following the date of endorsement of the open-end advance and ending on the due date of the next MIP, and shall be computed without taking into account delinquent payments or prepayments.

§ 203.308 Duration of open-end charge.

The mortgagee shall pay an annual open-end insurance charge to the Commissioner until:

(a) The mortgage is paid in full; or
(b) The deed to the Commissioner is filed for record; or
(c) The contract of insurance is otherwise terminated with consent of the Commissioner.

§ 203.309 Pro rata payment of open-end charge.

Upon termination of the insurance contract, the mortgagee shall pay to the Commissioner (in addition to any adjusted premium, termination charge and pro rata MIP) a portion of the current open-end insurance charge prorated from the beginning of the open-end insurance charge period to the end of the month in which termination occurred.

TERMINATION OF INSURANCE CONTRACT

§ 203.315 Termination by conveyance to other than Commissioner.

(a) The contract of insurance shall be terminated if:
(1) The mortgagee acquires the mortgaged property but does not convey it to the Commissioner;
(2) The property is bid in and acquired at a foreclosure sale by a party other than the mortgagee;
(3) After foreclosure the property is redeemed;
(4) After foreclosure and during the redemption period the mortgagee gives notice that it will not tender the property to the Commissioner.

§ 203.316 Termination by prepayment of mortgage.

The contract of insurance shall be terminated if the mortgage is paid in full prior to its maturity.

§ 203.317 Termination by voluntary agreement.

The contract of insurance shall be terminated if the mortgagor and mortgagee jointly request termination.

§ 203.318 Notice of termination by mortgagee.

No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the occurrence of one of the approved methods of termination set forth in this subpart.

§ 203.319 Pro rata payment of premiums and charges.

No contract of insurance shall be terminated until the mortgagee has paid to the Commissioner the pro rata portion of the current annual MIP, open-end insurance charge, adjusted premium, or termination charge as set forth in this subpart.

§ 203.320 Notice and date of termination by Commissioner.

The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination date shall be the last day of the month in which one of the following events has occurred:
(a) The date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee, if the mortgagee notifies the Commissioner that title will not be conveyed to the Commissioner.
(b) The date the mortgage was prepaid in full.
(c) The date a voluntary termination request is received by the Commissioner.

§ 203.321 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP or open-end insurance charge shall cease and all rights of the mortgagor and mortgagee shall be terminated.

DEFAULT UNDER MORTGAGE

§ 203.330 Definition of default.

If the mortgagor fails to make any payment, or to perform any other obligation under the mortgage, and such failure continues for a period of 30 days, the mortgage shall be considered in default for the purposes of this subpart.

§ 203.331 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after—
(a) The first uncorrected failure to perform any obligation under the mortgage; or
(b) The first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 203.332 Notice of default.

The mortgagee shall, within 60 days after default as defined in this part, give written notice thereof to the Commissioner, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 203.333 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagor pays to the mortgagee such expenses as the mortgagee has incurred in connection with the foreclosure proceedings and the mortgagee gives written notice of reinstatement to the Commissioner.

SPECIAL FORBEARANCE RELIEF

§ 203.340 Conditions of special forbearance relief.

(a) *General conditions—Commissioner's prior approval.* The Commissioner may approve special forbearance relief if he finds that the default was due to circumstances beyond the mortgagor's control. Approval is given on condition that the mortgagor and mortgagee enter into a written forbearance agreement providing for:
(1) The reduction or suspension of regular mortgage payments for a specified forbearance period;
(2) The resumption of regular mortgage payments after the expiration of the forbearance period; and
(3) The repayment of the total unpaid amount accruing prior to and during the forbearance period on or before the maturity date of the mortgage or on or before a date subsequent to the maturity date which is approved by the Commissioner.
(b) *Special conditions—Commissioner's approval not required.* Special forbearance relief may be granted by the mortgagee, without prior approval of the Commissioner, under the following conditions:
(1) The mortgagor shall establish to the satisfaction of the mortgagee, whose finding shall be conclusive, that:
(i) The mortgagor does not own other property subject to a mortgage insured by the Commissioner, and
(ii) That the default was due to circumstances beyond the control of the mortgagor because of death, illness, or curtailment of income of the mortgagor or a member of his family or because of damage to the mortgaged property against which the mortgagor is not adequately protected by insurance.
(2) The written forbearance agreement shall:
(i) Be limited to a period of 18 months;
(ii) Provide for the resumption of regular mortgage payments after the expiration of the forbearance period; and
(iii) Provide for the repayment of the total unpaid amount, accruing prior to and during the forbearance period, on or before a date extending beyond the original maturity for a period no greater than the period of forbearance.

§ 203.341 Reimbursement for uncollected interest.

The mortgagee shall be entitled to receive an allowance in the insurance settlement for unpaid mortgage interest, if the mortgagor fails to meet the requirements of the forbearance agreement and such failure continues for a period of up to 60 days. The interest allowance shall be computed to the earliest of the applicable dates following:
(a) The date of the institution of foreclosure.
(b) The date of the acquisition of the property by the mortgagee by means other than foreclosure.
(c) The date the property was acquired by the Commissioner under a direct conveyance from the mortgagor.
(d) 90 days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or such other date as the Commissioner may approve in writing prior to the expiration of the 90-day period.

§ 203.342 Recasting of mortgage.

(a) *General conditions—Commissioner's prior approval.* In addition to the special forbearance relief afforded in § 203.340, if the Commissioner makes the finding required in paragraph (a) of that section, he may approve a modification of the terms of the mortgage for the

purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or over such longer period as he may approve. The modification agreement may be effective when executed or upon the termination of a forbearance period.

(b) *Special conditions—Commissioner's approval not required.* The Commissioner's approval for a recasting of the total amount due under the mortgage shall not be required where the mortgagee makes the findings prescribed in § 203.340(b)(1). In such instances, the recasting shall be limited to the remaining term of the mortgage or a term extending not more than 10 years beyond the original maturity date. Notice of such modification, in a manner prescribed by the Commissioner, shall be given within 30 days after the modification agreement is executed.

(c) *Effect of modification.* Where a mortgage is modified, the principal amount of the mortgage, as modified:

(1) Shall not include any amounts assessed against the mortgagor as a late charge; and

(2) Shall be considered to be the "original principal of the mortgage" as the term is used in § 203.401.

FORBEARANCE RELIEF FOR MILITARY PERSONNEL

§ 203.345 Postponement of principal payments—mortgagors in military service.

In addition to the special forbearance relief afforded by §§ 203.340 through 203.342, if the mortgagor is a person in the military service (as defined in the Soldiers' and Sailors' Civil Relief Act of 1940), the mortgagee may, by written agreement with the mortgagor, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage. The agreement shall in no way affect the amount of the annual MIP which will continue to be calculated in accordance with the original amortization provisions of the mortgage.

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which he is in such service shall be excluded in computing the one-year period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this subpart. No postponement or delay in the prosecution of foreclosure proceedings during the period the mortgagor is in such military service shall be construed as failure on the part of the mortgagee to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

ASSIGNMENT OF MORTGAGE

§ 203.350 Assignment of defaulted mortgage—in general.

The Commissioner may approve the assignment to him of any mortgage covering a one- to four-family residence if he finds that the default was due to circumstances beyond the mortgagor's control.

§ 203.350a Time for assigning defaulted mortgage.

The mortgagee shall file for record the assignment of the mortgage to the Commissioner within 30 days of receiving his approval to assign or within such further time as may be approved in writing by the Commissioner.

§ 203.351 Application for insurance benefits and fiscal data.

On the date the assignment of the mortgage is filed for record, the mortgagee shall forward to the Commissioner the prescribed application for insurance benefits and fiscal data pertaining to the mortgage transaction, together with the receipts covering all disbursements, as required by the fiscal data form. In addition, the following requirements shall be met:

(a) *Items to be included with application.* The following items shall be forwarded to the Commissioner with the application:

(1) *Credit and security instrument.* The original credit and security instruments assigned without recourse or warranty, except that no act or omission of the mortgagee shall have impaired the validity and priority of the mortgage.

(2) *Recorded assignment instrument.* The original of the recorded assignment of mortgage. If the original of the assignment is not available, a copy shall be furnished and the original forwarded as soon as possible.

(3) *Hazard insurance.* All hazard insurance policies held in connection with the mortgaged property, together with a copy of the mortgagee's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the mortgagee.

(4) *Rights and interests.* An assignment of all rights and interests arising under the mortgage, and all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(5) *Property.* All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee).

(6) *Records and accounts.* All records, ledger cards, documents, books, papers and accounts relating to the mortgage transaction.

(7) *Additional information.* Any additional information or data which the Commissioner may require.

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

§ 203.352 Title evidence upon assignment.

Within 45 days after the assignment of a mortgage is filed for record, the mortgagee shall furnish to the Commissioner all title evidence held by the mortgagee, extended to include the assignment of the mortgage to the Commissioner.

§ 203.353 Certification by mortgagee.

At the time of assignment of the mortgage, the mortgagee shall certify to the Commissioner that:

(a) *Priority of mortgage to liens.* The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner;

(b) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the mortgage;

(c) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the mortgagee has a good right to assign.

CLAIM PROCEDURE

§ 203.355 Acquisition of property.

At any time within one year from the date of default, or such additional period of time as may be approved by the Commissioner, the mortgagee, at its election, shall either—

(a) Commence foreclosure of the mortgage; or

(b) If the laws of the State in which the mortgaged property is situated do not permit the commencement of foreclosure within one year from the date of default, the mortgagee shall commence foreclosure within 60 days after the expiration of the time during which such foreclosure is prohibited by such laws; or

(c) Acquire possession of, and title to, the mortgaged property by means other than foreclosure, such title being in the name of the mortgagee or the Commissioner.

§ 203.356 Notice of foreclosure.

The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion.

§ 203.357 Deed in lieu of foreclosure.

(a) *Mortgagors owning one property.* In lieu of instituting or completing a foreclosure, the mortgagee may acquire property from one other than a corporate mortgagor by voluntary conveyance from the mortgagor who certifies that he does not own any other property subject to a mortgage insured or held by FHA. Conveyance of the property by deed in

lieu of foreclosure is approved subject to the following requirements:

(1) The mortgage is in default at the time the deed is executed and delivered;

(2) The credit instrument is cancelled and surrendered to the mortgagor;

(3) The mortgage is satisfied of record as a part of the consideration for such conveyance;

(4) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(5) The mortgagee transfers to the Commissioner good marketable title accompanied by satisfactory title evidence.

(b) *Corporate mortgagors.* A mortgagee may accept a deed in lieu of foreclosure from a corporate mortgagor in compliance with the requirements of paragraph (a) if the mortgagee obtains the prior written consent of the Commissioner.

(c) *Mortgagors owning more than one property.* The mortgagee may accept a deed in lieu of foreclosure in compliance with the provisions of paragraph (a) from an individual who owns more than one property which is subject to a mortgage insured or held by the FHA if the mortgagee obtains the prior written consent of the Commissioner.

§ 203.358 Direct conveyance of property.

In acquiring the property or conveying the property to the Commissioner the mortgagee may arrange for the deed to be made directly to the Commissioner from the mortgagor or other grantor. The mortgagee shall be responsible for determining that such conveyance will comply with all of the provisions of this part conveying good marketable title and satisfactory title evidence.

§ 203.359 Time of conveyance to Commissioner.

After acquiring good marketable title to and possession of the property the mortgagee shall transfer the property to the Commissioner:

(a) Within 30 days after acquiring possession of the mortgaged property by foreclosure or other means; or

(b) Within such further time as may be necessary to complete the title examination and perfect the title.

§ 203.360 Notice of property transfer and application for insurance benefits.

On the date the deed is filed for record the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance and shall assign, without recourse or warranty any or all claims which the mortgagee has acquired in connection with the mortgage transaction, and as a result of the foreclosure proceedings or other means by which the mortgagee acquired or conveyed such property, except such claims as may have been released with the approval of the Commissioner.

§ 203.361 Acceptance of property by Commissioner.

Upon receipt of notice of property transfer the Commissioner shall accept title to and possession of the property as of the date of the filing for record of the deed to the Commissioner, subject to compliance with the regulations in this part.

§ 203.362 Conditions for withdrawal of application for insurance benefits.

With the consent of the Commissioner, a mortgagee may withdraw an application for insurance benefits if the mortgagee agrees that it will:

(a) Accept a reconveyance of the property under a deed which warrants against the acts of the Commissioner and all claiming by, through, or under him; and

(b) Promptly file a reconveyance for record; and

(c) Accept without continuation the title evidence which it furnished the Commissioner; and

(d) Reimburse the Commissioner for property expenditures as set forth in § 203.364.

§ 203.363 Reconveyance for noncompliance with regulations.

If, for any reason, the mortgagee fails to comply with the regulations in this subpart, the Commissioner may hold processing of the application for insurance benefits in abeyance for a reasonable time in order to permit the mortgagee to comply or, in the alternative, the Commissioner may reconvey title to the property to the mortgagee in which event the application for insurance benefits shall be considered as cancelled without prejudice to the rights of the mortgagee to reapply for insurance benefits at a subsequent date.

§ 203.364 Mortgagee's liability for property expenditures.

Where the Commissioner acquires a property and thereafter it becomes necessary for the Commissioner to reconvey the property to the mortgagee because of the mortgagee's noncompliance with these regulations or because, with the consent of the Commissioner, the application for insurance benefits is withdrawn, the mortgagee shall reimburse the Commissioner for all expenses incurred in connection with such acquisition and reconveyance. The reimbursement shall include all expenditures made from the date the deed to the Commissioner was filed for record to the date of reconveyance of the property to the mortgagee, after appropriate adjustment on account of any income received from the property.

§ 203.365 Documents and information to be furnished Commissioner.

(a) *Items to be furnished Commissioner.* Within 45 days after the deed is filed for record, the mortgagee shall forward to the Commissioner:

(1) A copy of the deed to the Commissioner which has been filed for record and the title evidence continued so as to include recordation of the deed. The original deed shall be forwarded as soon as received from the recording authority.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Receipts covering all disbursements as required by the fiscal data form.

(4) Ledger cards covering the mortgage transaction.

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

(b) *Items to be retained by mortgagee.* The mortgagee shall retain all cash amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

§ 203.366 Conveyance of marketable title.

The mortgagee shall tender to the Commissioner a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey good marketable title to the property, which shall be accompanied by title evidence satisfactory to the Commissioner.

§ 203.367 Contents of deed and supporting documents.

The deed and supporting accompanying documents shall be as follows:

(a) *Deed.* A deed conveying the property to the Federal Housing Commissioner. The deed shall:

(1) Contain covenants which warrant title against acts of the grantor, and all claiming by, through, or under said grantor, if the grantor is the mortgagee or mortgagor; if the grantor is a party other than the mortgagee or mortgagor, the special warranty covenants may be limited or amended to accord with the law of the particular jurisdiction.

(2) Recite nominal consideration, if such recital is adequate under the laws of the State in which the property is located or such other consideration as may be necessary to support the deed.

(b) *Maps or survey.* A map or diagram showing property location with reference to public streets or roads or a survey, if available. When a part of the property has been taken by condemnation proceedings or conveyance in lieu of condemnation, a map or diagram showing the part taken and the property remaining is required.

(c) *Credit documents.* The original credit and security instruments, if available or a deficiency judgment, if any, duly assigned or endorsed by the mortgagee, without recourse, to the Commissioner.

Condition of Property

§ 203.375 Property condition.

(a) When the property is transferred, or a mortgage is assigned to the Commissioner, the property shall be undamaged by fire, earthquake, flood, or tornado, except as set forth in this subpart.

(b) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance claims paid on or after July 2, 1968.

§ 203.376 [Reserved]

§ 203.377 [Reserved]

§ 203.378 [Reserved]

§ 203.379 Adjustment for fire, flood, earthquake or tornado damage.

If the property has been damaged by fire, flood, earthquake, or tornado, such damage shall be repaired prior to conveyance of the property to the Commissioner, except in the following instances:

(a) If the prior approval of the Commissioner is obtained, the damaged property may be conveyed to him or the mortgage assigned to him and he shall deduct from the insurance benefits his estimate of the cost of repairing such damage or any insurance recovery received by the mortgagee, whichever amount is the greater.

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

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

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

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

(c) The provisions in paragraph (b) of this section shall be applicable with respect to the insurance of all mortgages whether insured prior to May 8, 1968, or insured on or after such date.

§ 203.380 Certificate of property condition.

The mortgagee shall either certify that as of the date of the filing for record of the deed, or assignment of the mortgage to the Commissioner, the property was undamaged by fire, flood, earthquake, or tornado, or shall describe the damage to such property resulting from such hazards as of such date. In the absence of evidence to the contrary, the mortgagee's certificate or description of the damage shall be accepted by the Commissioner as establishing the condition of the property, as of the date of the filing of the deed or assignment of the mortgage.

§ 203.381 Occupancy of property.

Unless otherwise approved by the Commissioner the mortgagee shall certify that the property is vacant and does not contain any personal property as of the date of the filing for record of the deed to the Commissioner. This section shall not apply to a mortgage assigned to the Commissioner.

§ 203.382 Cancellation of hazard insurance.

The mortgagee shall cancel any hazard insurance policy as of the date of the filing for record of the deed to the Commissioner subject to the following conditions:

(a) The amount of the return premium due the mortgagee because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data supporting the application for debentures and the amount shall be deducted from the total amount claimed.

(b) If the mortgagee's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to the Commissioner, accompanied by the carrier's or agent's statement.

(c) If the mortgagee's calculation of the return premium is more than the actual return, the mortgagee may file with the Commissioner a claim, supported by the carrier's or agent's statement of the amount of the refund, whereupon the Commissioner shall issue a check to the mortgagee in settlement of the claim.

PROPERTY TITLE TRANSFERS AND TITLE WAIVERS

§ 203.385 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to the Commissioner:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in the Commissioner and inure to the benefit of his successors in office.

(b) *Mortgagee's policy of title insurance.* A mortgagee's policy of title insurance supplemented by an Abstract and an Attorney's Certificate of Title covering the period subsequent to the date of the mortgage, the terms of the policy shall be such that the liability of the title company will continue in favor of the Commissioner after title is conveyed to him. The policy may be drawn in favor of the mortgagee and the Federal Housing Commissioner, "as their interests may appear", with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles. If title evidence consists of an Abstract and an Attorney's Certificate of Title, the search shall extend for at least forty years prior to the date of the Certificate to a well recognized source of good title;

(d) *Torrens or similar certificate.* A Torrens or similar title certificate; or

(e) *Title standard of U.S. or state government.* Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any State or Territory thereof.

§ 203.386 Coverage of title evidence.

Evidence of title shall be executed as of a date to include the recordation of the deed to the Commissioner. The evidence of title shall show that according to the public records, there are not, at such date, any outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments.

§ 203.387 Acceptability of customary title evidence.

If the title and title evidence are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title and title evidence shall be satisfactory to the Commissioner and shall be considered by him as good and marketable.

§ 203.389 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

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

(b) (1) Customary easements for public utilities, party walls, driveways, and other purposes.

(2) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on

subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided a policy of title insurance is furnished expressly insuring the Commissioner against loss by reason of such penalties.

(l) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent leading institutions and leading attorneys in the community.

(n) The voluntary or involuntary conveyance of a part of the subject property pursuant to condemnation proceedings or in lieu of condemnation proceedings, if:

(1) The part conveyed does not exceed 10 percent by area of the property;

(2) No damage to existing structures, improvements, or unrepaired damage to sewage, water, or paving has been suffered;

(3) All of the payment received as compensation for the taking by condemnation or conveyance in lieu of condemnation has been applied to reduction of the mortgage indebtedness;

(4) The conveyance occurred subsequent to insurance of the mortgage; and

(5) There is included with the documents and information furnished the Commissioner with the application for insurance benefits, a statement by the mortgagee that the requirements of this paragraph have been met.

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

(a) *Mortgages sold by the Secretary.* (1) If the Secretary sells a mortgage and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage.

(2) The Secretary will accept an assignment of a mortgage previously sold by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage assignment was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

(b) *Property sold by the Secretary.* (1) If a property held by the Secretary is sold by him and he insures a mortgage financing such sale, and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date such mortgage was filed for record.

(2) The Secretary will accept an assignment of a mortgage executed in connection with the sale of property by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389, or not otherwise waived in writing by the Commissioner. In such instances, the claim will be paid if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Commissioner to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

PAYMENT OF INSURANCE BENEFITS

§ 203.400 Method of payment.

If the application for insurance benefits is acceptable to the Commissioner, payment of the insurance claim shall be made in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment, except that where the mortgage is insured pursuant to section 223(e) of the Act such claim shall be paid in cash from the Special Risk Insurance Fund, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the items as set forth in § 203.403.

§ 203.401 Amount of payment—conveyed properties.

The amount of the insurance benefits shall be determined by adding to the original principal of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of the institution of foreclosure proceedings, on the date of the acquisition of the property otherwise after default, or on the date the property was acquired by the Commissioner under a direct conveyance by the mortgagor, the amount of all payments made by the mortgagee and allowances for items as set forth in § 203.402, less all items as set forth in § 203.403.

§ 203.402 Items included in payment—conveyed properties.

The insurance benefits paid in connection with properties conveyed to the Commissioner shall include the following items:

(a) Taxes, ground rent and water rates, which are liens prior to the mortgage;

(b) Special assessments, which are noted on the application for insurance of which become liens after the insurance of the mortgage;

(c) Hazard insurance on the mortgaged property;

(d) MIP or open-end insurance charges;

(e) Taxes imposed upon any deeds or other instruments by which said property was acquired by the mortgagee and transferred or conveyed to the Commissioner;

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to the Secretary) actually paid by the mortgagee and approved by the Commissioner, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which

existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area.

(g) Reasonable payments made by the mortgagee, with the approval of the Commissioner, for the purpose of protecting, operating, or preserving the property;

(h) Any uncollected mortgage interest allowed pursuant to an approved forbearance plan;

(i) An amount which the Commissioner finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures and the payment of any MIP and open-end insurance charge by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means under a mortgage to which the provisions of sections 302 and 306 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, apply during any part or all of the period of the mortgagor's military service and three months thereafter.

(j) Charges for the administration, operation, maintenance or repair of community-owned property or the maintenance and repair of the mortgaged property paid by the mortgagee with respect to which it certifies to the Commissioner that payment was made for the purpose of discharging an obligation arising out of a covenant filed for record and approved by the Commissioner prior to the insurance of the mortgage.

(k) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203,356, 203.359, 203.360, and 203.365 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

§ 203.403 Items deducted from payment—conveyed properties.

There shall be deducted from the total of the added items in §§ 203.401 and 203.402 the following cash items:

(a) All amounts received by the mortgagee on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All amounts received by the mortgagee from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(c) All cash retained by the mortgagee including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

§ 203.404 Amount of payment—assigned mortgages.

Upon an acceptable assignment of a mortgage, the Commissioner shall pay to the mortgagee the unpaid principal balance of the loan at the time of assignment and an amount determined by:

(a) Adding the following items:

(1) Any accrued and unpaid mortgage interest.

(2) Any advances made under the mortgage and approved by the Commissioner.

(3) Reimbursement for such costs and attorney's fees as the Commissioner finds were properly incurred in connection with the defaulted mortgage and its assignment to the Commissioner.

(4) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such payment is made, except that when the mortgagee fails to meet any one of the requirements of §§ 203.350a, 203.351, and 203.353 of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(b) Deducting all cash retained by the mortgagee, including amounts held or deposited for the account of the mortgagor or to which it is entitled under the mortgage transaction that have not been applied in reduction of the principal mortgage indebtedness.

§ 203.405 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
4¾	Jan. 1, 1967	Jan. 1, 1968
5⅛	Jan. 1, 1968	July 1, 1969
5⅞	July 1, 1969	Jan. 1, 1970
6⅛	Jan. 1, 1970	July 1, 1970
6⅛	July 1, 1970	Jan. 1, 1971
6⅛	Jan. 1, 1971	July 1, 1971
5⅞	July 1, 1971	

§ 203.406 Maturity of debentures.

Debentures shall mature 20 years from the date of issue.

§ 203.407 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.408 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the mortgagee.

§ 203.409 Redemption of debentures.

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

§ 203.410 Issue date of debentures.

(a) *Conveyed properties.* Where the property is conveyed to the Commissioner, debentures shall be dated:

(1) If issued prior to September 2, 1964, or issued on or after such date and a certificate of claim is also issued, as of one of the dates as follows:

(i) The foreclosure proceedings were instituted;

(ii) The property was otherwise acquired by the mortgagee after default; or

(iii) The property was acquired by the Commissioner, if directly conveyed to the Commissioner from the mortgagor.

(2) If issued on or after September 2, 1964, and a certificate of claim is not issued, as of the date of default as defined in this part.

(3) As of the applicable date specified in subparagraph (1), if the insurance settlement includes an allowance for uncollected interest pursuant to § 203.341.

(b) *Assigned mortgages.* Where the mortgage is assigned to the Commissioner, debentures shall be dated as of the date of the assignment.

§ 203.411 Cash adjustment.

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

CERTIFICATE OF CLAIM

§ 203.415 Delivery of certificate of claim.

(a) If the mortgage was accepted for insurance pursuant to a commitment issued prior to September 2, 1964, the mortgagee may, by filing a written request with the application for debentures, receive in addition to the debentures and the cash adjustment check, a certificate of claim issued in accordance with section 204(e) of the Act. This certificate shall become payable (if at

all) as prescribed in section 204(f) of the Act.

(b) If the mortgage was accepted for insurance pursuant to a commitment issued on or after September 2, 1964, no certificate of claim shall be issued.

§ 203.416 Amount and items of certificate of claim.

The certificate shall be for an amount which the Commissioner determines to be sufficient to pay all amounts due under the mortgage and not covered by the amount of debentures and cash adjustment check. The certificate shall include a reasonable amount for necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and the conveyance thereof to the Commissioner, including reasonable attorneys' fees, unpaid interest, and cost of repairs to the property made by the mortgagee to remedy the waste.

§ 203.417 Rate of interest of certificate of claim.

Each certificate of claim shall provide that there shall accrue to the holder thereof with respect to the face amount of such certificate, an increment at the rate of 3 percent per annum.

MUTUAL MORTGAGE INSURANCE FUND AND DISTRIBUTIVE SHARES

§ 203.420 Nature of Mutual Mortgage Insurance Fund.

The Mutual Mortgage Insurance Fund shall consist of the General Surplus Account and the Participating Reserve Account.

§ 203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.

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

§ 203.422 Right and liability under Mutual Mortgage Insurance Fund.

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

§ 203.423 Distribution of distributive shares.

In the event the contract of insurance is terminated by reason of payment in full of the mortgage or by voluntary termination approved by the Commissioner, the Commissioner may distribute to the mortgagor a share of the Participating Reserve Account in such manner and amount as the Commissioner shall determine to be equitable and in accordance with sound actuarial and accounting practice.

§ 203.424 Maximum amount of distributive shares.

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

§ 203.425 Finality of determination.

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

§ 203.426 Inapplicability to housing in older declining urban areas.

The provisions of §§ 203.420 through 203.425 shall not apply to mortgages financing housing in declining urban areas meeting the requirements of § 203.43a.

SALE, ASSIGNMENT AND PLEDGE OF INSURED MORTGAGE

§ 203.430 Sale of interests in insured mortgages.

No mortgagee may sell or otherwise dispose of any insured mortgage, or group of insured mortgages, or any partial interest in such mortgage or mortgages by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.431 Sale of insured mortgage to approved mortgagee.

An insured mortgage may be sold to another approved mortgagee. Upon such sale both the seller and the buyer shall notify the Commissioner within 30 days, on a form prescribed by the Commissioner.

§ 203.432 Effect of sale of insured mortgage.

When an insured mortgage is sold to another approved mortgagee, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract of insurance.

§ 203.433 Assignments, pledges and transfers by approved mortgagee.

(a) An assignment, pledge, or transfer of an insured mortgage or group of insured mortgages, not constituting a final sale, may be made by an approved mortgagee to another approved mortgagee provided the following requirements are met:

(1) The assignor, pledgor or transferor shall remain the mortgagee of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(b) An assignment or transfer of an insured mortgage or group of insured mortgages may be made by an approved mortgagee to other than an approved mortgagee provided the requirements under paragraph (a) (1) and (2) are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved mortgagee that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to hold an insured mortgage or group of insured mortgages.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within 1 year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such mortgage or group of mortgages.

(ii) The transferor or assignor shall obtain a sale and transfer of such mortgage or group of mortgages to an approved mortgagee.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

(Sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

§ 203.434 Declaration of trust.

A sale of a beneficial interest in a group of insured mortgages, where the interest to be acquired is related to all of the mortgages as an entirety, rather than an interest in a specific mortgage, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

§ 203.435 Transfers of partial interests.

A partial interest in an insured mortgage may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortgagee.* The insured mortgage shall be held by an approved mortgagee which, for the purposes of this section, shall be referred to as the "principal mortgagee".

(b) *Interest of principal mortgagee.* The principal mortgagee shall retain and hold for its own account a financial interest in the insured mortgage.

(c) *Qualification for holding partial interest.* A partial interest in an insured mortgage shall be issued to and held only by:

(1) A mortgagee approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any

pension fund, pension trust, or profit-sharing plan) which certifies to the principal mortgagee that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured mortgage.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal mortgagee shall retain title to the mortgage and remain the mortgagee of record under the contract of mortgage insurance.

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(3) The mortgage documents shall remain in the custody of the principal mortgagee.

(4) The responsibility for servicing the insured mortgages shall remain with the principal mortgagee.

INSURED HOME IMPROVEMENT LOANS

§ 203.440 Definitions.

All of the definitions contained in § 203.50 of this subchapter shall apply to §§ 203.440 et seq. In addition the following terms shall have the meaning indicated:

(a) "Insured loan" means a loan which has been insured as evidenced by the issuance of an Insurance Certificate or by the endorsement of the note for insurance by the Commissioner.

(b) "Contract of insurance" means the agreement evidenced by the issuance of an Insurance Certificate or by the endorsement of the Commissioner upon the note given in connection with an insured loan, incorporating by reference the regulations in §§ 203.440 et seq. and the applicable provisions of the Act.

(c) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(d) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(e) "Maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the original note and security instrument.

(f) "Debentures" mean registered, transferable securities which are valid and binding obligations, unconditionally guaranteed as to principal and interest by the United States.

§ 203.441 Insurance of loan.

Upon compliance with a commitment, the Commissioner shall insure the loan evidencing the insurance by the issuance of an Insurance Certificate or by an appropriate panel or endorsement placed on the original note, which will identify the regulations under which the loan is insured and the date of insurance.

§ 203.442 Contract created by Insurance Certificate or by endorsement.

The loan is insured from the date of the issuance of an Insurance Certificate or from the date of the endorsement of the note. The Commissioner and the lender shall thereafter be bound by the Act and the regulations in §§ 203.440 et seq. with the same force and to the same extent as if a separate contract had been executed relating to the insured loan.

§ 203.443 Method of payment of insurance premium.

The payment of any insurance premium under §§ 203.440 et seq. shall be made to the Commissioner by the lender either in cash or debentures at par plus accrued interest.

§ 203.444 Calculation of insurance premium.

The amount of any insurance premium shall be calculated in accordance with the amortization provisions of the loan without taking into account delinquent payments or prepayments.

§ 203.446 Amount of initial insurance premium.

The initial insurance premium shall be in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the loan without taking into account delinquent payments or prepayments.

§ 203.447 Due date of initial insurance premium.

The initial insurance premium shall be paid on the first anniversary date of the beginning of amortization following the date on which the insurance becomes effective by the issuance of an Insurance Certificate or by the endorsement of the note.

§ 203.448 Period covered by initial insurance premium.

The initial insurance premium shall cover the period beginning with the date of the issuance of an Insurance Certificate or the date of the insurance endorsement and ending on the next anniversary of the beginning of amortization. Subsequent premium payments shall cover the twelve month period following each anniversary date.

§ 203.449 Adjustment of initial insurance premium.

Regardless of whether the period covered by the initial insurance premium is more or less than one year, payment shall be made to the Commissioner on account of the initial insurance premium in an amount equal to ½ percent of the average outstanding principal obligation for the first year of amortization under the loan. If such payment is less than ½ percent or more than one percent of the outstanding principal balance, without taking into account delinquencies or prepayments, the initial insurance premium shall be adjusted to accord with the prescribed limitations. If such payment is within the prescribed limitations no adjustment shall be made and the amount of the payment shall be paid to the Commissioner as the initial insurance premium.

§ 203.451 Pro rata payment of initial insurance premium.

If termination of the contract of insurance occurs before the due date of the initial insurance premium, the lender shall pay to the Commissioner the portion of the initial premium due to the first of the month following the effective termination date, which shall be computed from:

(a) The beginning of amortization, if the issuance of an Insurance Certificate or the endorsement of the note occurred within six months after the beginning of amortization; or

(b) The date of the issuance of an Insurance Certificate or the endorsement of the credit instrument, if either occurred any time prior to the beginning of amortization, or during the second half of any amortization year.

§ 203.452 Amount of annual insurance premium.

After payment of the initial insurance premium an annual insurance premium shall be paid in an amount equal to ½ percent of the average outstanding principal obligation for the 12-month period preceding the date on which the premium becomes payable, without taking into account delinquent payments or prepayments.

§ 203.453 Due date of annual insurance premium.

After payment of the initial insurance premium an annual insurance premium shall be paid on each anniversary date of the beginning of amortization.

§ 203.454 Duration of annual insurance premium.

After payment of the initial insurance premium, the lender shall pay an annual insurance premium to the Commissioner until:

(1) The loan is paid in full; or

(2) The obligation is assigned to the Commissioner; or

(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.456 Pro rata payment of annual insurance premium.

(a) *In general.* If the contract of insurance is terminated after the due date of the initial insurance premium, the lender shall pay to the Commissioner a portion of the current annual insurance premium prorated from the due date of the last annual insurance premium paid to the date the contract of insurance was terminated.

(b) *Computation of pro rata premium.* For the purpose of computing the pro rata portion of the annual insurance premium, the date of termination of insurance shall be the last day of the month in which:

(1) The loan was prepaid; or
(2) A voluntary termination request is received by the Commissioner, or
(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.457 Voluntary termination of contract.

Upon request by the borrower and lender and submission of the Insurance Certificate for cancellation or the note for cancellation of the insurance endorsement, the Commissioner may terminate the insurance contract on the loan.

§ 203.458 Termination by prepayment of loan.

The contract of insurance shall be terminated if the loan is paid in full prior to its maturity.

§ 203.459 Notice of termination by lender.

No contract of insurance shall be terminated until the lender has given written notice thereof to the Commissioner within 30 days from the occurrence of one of the approved methods of termination set forth in §§ 203.440 et seq.

§ 203.462 Pro rata payment of premium before termination.

No contract of insurance shall be terminated until the lender has paid to the Commissioner the pro rata portion of the current annual insurance premium.

§ 203.463 Notice and date of termination by Commissioner.

The Commissioner shall notify the lender that the contract of insurance has been terminated and the effective termination. The termination date shall be the last day of the month in which:
(1) The loan was prepaid; or
(2) A voluntary termination request is received by the Commissioner, or
(3) The contract of insurance is otherwise terminated with the consent of the Commissioner.

§ 203.464 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent insurance premium shall cease and all rights of the borrower and lender shall be terminated.

§ 203.466 Definition of default.

If the borrower fails to make any payment, or to perform any other obligation under the loan and such failure continues for a period of 30 days, the loan shall be considered in default for the purposes of §§ 203.440 et seq.

§ 203.467 Date of default.

For the purposes of §§ 203.440 et seq. the date of default shall be considered as 30 days after—
(a) The first uncorrected failure to perform any obligation under the loan, or
(b) The first failure to make a monthly payment which subsequent payments by the borrower are insufficient to cover when applied to the overdue monthly payment in the order in which they became due.

§ 203.468 Notice of default.

The lender shall, within 60 days after default as defined in §§ 203.440 et seq. give written notice thereof to the Commissioner, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 203.469 Reinstatement of defaulted loan.

If after default and prior to assignment by the lender of the loan to the Commissioner, the borrower shall pay to the lender all monthly payments in default, written notice shall be given to the Commissioner within 30 days and the insurance shall continue as if such default had not occurred.

§ 203.471 Conditions of special forbearance.

In addition to any other relief which may be afforded in the event of default, the Commissioner may approve special forbearance relief with respect to any loan of the Commissioner—
(a) Finds that default was due to circumstances beyond the borrower's control; and
(b) Finds that it is probable that the loan will be restored to a current condition within a reasonable period of time.

§ 203.472 Relief for borrower in military service.

If the borrower is a person in military service, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the lender may, by written agreement with the borrower, postpone for the period of military service, and three months thereafter, any part of the monthly payment, which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments thereafter in amounts which will completely amortize the obligation within its original maturity. The agreement shall in no way affect the amount of the annual insurance premium which shall continue to be calculated in accordance with the original amortization provisions of the loan.

§ 203.473 Election of action.

Where a real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, lien, judgment, or any other security device has been used to secure the payment of a loan made under the provisions of § 203.440 et seq., the lender may not, except with the approval of the Commissioner, proceed against such security and also make claim under its contract of insurance, but shall elect which method it desires to pursue.

§ 203.474 Maximum claim period.

The claim shall be filed within one year from the date of default; or such additional period of time as may be approved by the Commissioner if there is granted an extension of the one year period within which claim shall be made.

§ 203.476 Claim application and items to be filed.

The claim for reimbursement on an insured loan shall be made upon an application form prescribed by the Commissioner. The application shall be accompanied by:
(a) The fiscal data pertaining to the loan transaction as required by the fiscal data form.
(b) Receipts covering all disbursements as required by the fiscal data form;
(c) The original note and the security held, assigned to the Commissioner without recourse of warranty, except that no act or omission of the lender shall have impaired the validity and priority of such security;
(d) Any hazard insurance policies held on property serving as security for the loan, together with a copy of the lender's notification to the carrier authorizing the amendment of the loss payable clause substituting the Commissioner as the holder of the security.
(e) The assignment to the Commissioner of all rights and interests arising under the loan, and all claims of the lender against the borrower or others arising out of the loan transaction;
(f) Any title evidence held by the lender;
(g) All property of the borrower held by the lender or to which it is entitled and, if payment is requested in debentures, all cash held by the lender or to which it is entitled, including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness;
(h) All records, ledger cards, documents, books, papers and accounts relating to the loan transaction;
(i) Any additional information or data which the Commissioner may require.

§ 203.477 Certificate by lender when loan assigned.

At the time of the assignment of the loan, the lender shall certify to the Commissioner that:
(a) The amount stated in the instrument of assignment is actually due and owing on the loan;
(b) There are no offsets of counterclaims thereto, and the financial institution has a good right to assign.

§ 203.478 Payment of insurance benefits.

(a) *Claim computation, items included.* Upon acceptable assignment of the note and security instruments, the Commissioner shall pay the lender an amount equal to the unpaid principal balance of the loan, plus:
(1) Any accrued interest due as of the date of execution of the assignment of the loan to the Commissioner.
(2) Any advances made previously under the provisions of the loan instrument and approved by the Commissioner.

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

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

(5) If payment is made in cash, an amount equivalent to the debenture interest which would have been earned, as of the date insurance settlement occurs, except that where the lender fails to meet any one of the requirements of §§ 203.476 and 203.477 and such failure continues for more than 30 days (or such further time as the Commissioner may approve in writing), the dedenture interest shall be computed for 30 days or the extended period.

(b) *Claim computation, items deducted.* If the lender is to receive cash, there shall be deducted from the total of the added items in paragraph (a) any cash held by the lender or to which it is entitled including deposits made for the account of the borrower and which have not been applied in reduction of the principal loan indebtedness.

(c) *Method of payment.* Payment of claim shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon filing a written request with the application.

(d) *Special provision—payment in debentures.* All of the provisions of §§ 203.479 through 203.487 of this subpart shall be applicable in connection with the payment in debentures of insurance benefits under this subpart.

§ 203.479 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
4½	Jan. 1, 1967	Jan. 1, 1968
6⅛	Jan. 1, 1968	July 1, 1969
5¾	July 1, 1969	Jan. 1, 1970
6⅛	Jan. 1, 1970	July 1, 1970
6¼	July 1, 1970	Jan. 1, 1971
6⅛	Jan. 1, 1971	July 1, 1971
5⅞	July 1, 1971	

§ 203.481 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 203.482 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 203.483 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000 and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the lender.

§ 203.484 Redemption of debentures.

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

§ 203.486 Issue date of debentures.

The debentures shall be issued as of the date of the execution of the assignment of the loan in accordance with the requirements of § 203.476(c).

§ 203.487 Cash adjustment.

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

§ 203.488 Sale of interests in insured loans.

No lender may sell or otherwise dispose of any insured loan or group of insured loans, or any partial interest in such loan or loans by means of any agreement, arrangement or device except pursuant to this subpart.

§ 203.489 Sale of insured loan to approved lender.

An insured loan may be sold to another approved lender. Upon such sale both the seller and the buyer shall notify the Commissioner within 30 days, on a form prescribed by the Commissioner.

§ 203.491 Effect of sale of insured loan.

When an insured loan is sold to another approved lender, the buyer shall thereupon succeed to all the rights and become bound by all the obligations of the seller under the contract of insurance and the seller shall be released from its obligations under the contract of insurance.

§ 203.492 Assignments, pledges and transfers by approved lender.

(a) An assignment, pledge or transfer of an insured loan or group of insured loans, not constituting a final sale, may be made by an approved lender to another approved lender provided the following requirements are met:

(1) The assignor, pledgor or transferor shall remain the lender of record.

(2) The Commissioner shall have no obligation to recognize or deal with any party other than the lender of record with respect to the rights, benefits and obligations of the lender under the contract of insurance.

(b) An assignment or transfer of an insured loan or group of insured loans may be made by an approved lender to other than an approved lender provided the requirements under paragraph (a) (1) and (2) are met and the following additional requirements are met:

(1) The assignee or transferee shall be a corporation, trust or organization (including but not limited to any pension trust or profit-sharing plan) which certifies to the approved lender that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to hold an insured loan or group of insured loans.

(2) The assignment or transfer shall be made pursuant to an agreement under which the transferor or assignor is obligated to take one of the following alternate courses of action within one year from the date of the assignment or within such additional period of time as may be approved by the Commissioner:

(i) The transferor or assignor shall repurchase and accept a reassignment of such loan or group of loans.

(ii) The transferor or assignor shall obtain a sale and transfer of such loan or group of loans to an approved lender.

(c) Notice to or approval of the Commissioner is not required in connection with assignments, pledges or transfers pursuant to this section.

§ 203.493 Declaration of trust.

A sale of a beneficial interest in a group of insured loans, where the interest to be acquired is related to all of the loans as an entirety, rather than an interest in a specific loan, shall be made only pursuant to a declaration of trust, which has been approved by the Commissioner prior to any such sale.

§ 203.495 Transfers of partial interests.

A partial interest in an insured loan may be transferred under a participation agreement without obtaining the approval of the Commissioner, if the following conditions are met:

(a) *Principal mortagee.* The insured loan shall be held by an approved lender which, for the purposes of this section, shall be referred to as the "principal lender".

(b) *Interest of principal lender.* The principal lender shall retain and hold for its own account a financial interest in the insured loan.

(c) *Qualification for holding partial interest.* A partial interest in an insured loan shall be issued to and held only by:

(1) A lender approved by the Commissioner; or

(2) A corporation, trust or organization (including, but not limited to any pension fund, pension trust, or profit-sharing plan) which certifies to the principal lender that:

(i) It has assets of $100,000 or more; and

(ii) It has lawful authority to acquire a partial interest in an insured loan.

(d) *Participation agreement provisions.* The participation agreement shall include provisions that:

(1) The principal lender shall retain title to the loan and remain the lender of record under the contract of loan insurance.

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the principal lender with respect to the rights, benefits, and obligations of the lender under the contract of insurance.

(3) The loan documents shall remain in the custody of the principal lender.

(4) The responsibility for servicing the insured loans shall remain with the principal lender.

EXTENSION OF TIME

§ 203.496 Actions to be taken by mortgagee or lender.

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

AMENDMENTS

§ 203.499 Effect of amendments.

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

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

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Subpart A—Eligibility Requirements

DEFINITIONS

§ 205.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Act" means the National Housing Act.

(b) "Secretary" means the Secretary of Housing and Urban Development or his authorized representatives.

(c) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(d) "Improvements" mean water lines and water supply installations, sewer lines and sewage disposal installations; steam, gas, and electric lines and installations; roads; streets; curbs; gutters; sidewalks; storm drainage facilities; and other installations or work, whether on or off the site of the mortgaged property, which the Commissioner deems necessary or desirable to prepare land primarily for residential and related uses or to provide facilities for public or common use. Related uses may include industrial uses, with sites for such uses to be in proper proportion to the size and scope of the developments. The public or common facilities shall include only such buildings as are needed in connection with water supply or sewage disposal installations; or steam, gas, or electric lines or installations; and such buildings, other than schools, as the Commissioner considers appropriate, which are to be owned and maintained jointly by the property owners.

(e) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(f) "Land development" means the process of making, installing, or constructing improvements.

(g) "Local public body" means a county, city, or other political subdivision within which a land development project or part of such project is established, and any other political subdivision, public agency, or instrumentality of one or more States, counties, or political subdivisions empowered under law to take or withhold any action required in connection with the establishment of such project.

(h) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the payments provided for in the mortgage.

(i) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

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

(k) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(l) "Project" means the land development and improvements which meet the land development criteria established by the Commissioner and which are to be paid for in part with proceeds of an insured mortgage or mortgages.

(m) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(o) [Reserved]

(p) "State" includes the several States, Puerto Rico, the District of Columbia,

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

PRELIMINARY EXAMINATION AND APPLICATION

§ 205.5 Preliminary examination.

Prior to the filing of an application, the sponsor of a land development project shall request and be given an analysis of the proposed project. No fee shall be charged for the analysis.

§ 205.7 Filing of application.

An application for the issuance of either a condition or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless the information, documents, and exhibits required by the application are furnished.

FEES AND CHARGES

§ 205.10 Application and commitment fees.

(a) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall accompany the application for a conditional commitment.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the mortgage applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $4.50 per thousand dollars of the mortgage applied for, shall also be submitted with the application for a firm commitment.

§ 205.12 Conditions of commitment.

(a) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

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

(c) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(d) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 205.17 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $4.50 per thousand dollars of the amount of the requested increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $4.50 per thousand dollars of the amount of the increase requested.

§ 205.20 Transfer fee.

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

§ 205.22 Refund of fees.

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

§ 205.25 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

ELIGIBLE MORTGAGORS

§ 205.30 Eligible mortgagors.

(a) *General requirements.* In order to be eligible as a mortgagor under this subpart, the applicant must be a mortgagor approved by the Commissioner, which is regulated or restricted by the Commissioner as to capital structure, use of property and methods of operation. A public body shall not be eligible for approval as a mortgagor. The regulation or restriction of the mortgagor shall continue until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage. The regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner may approve.

(b) *Special requirements—water or sewer systems.* The owner of a privately or cooperatively owned water or sewer system may be approved as a mortgagor. Such mortgagor shall be regulated by the Commissioner with respect to capital structure, methods of operation, rate of return, user rates and charges, and the terms and conditions of any sale or transfer. This regulation by the Commissioner shall continue for the entire period of private or cooperative ownership or until the Commissioner is satisfied that adequate provision exists, through governmental regulation or other means, to protect the system users as to the methods of operation, rates, charges, and disposition of such system.

ELIGIBLE MORTGAGEES

§ 205.35 Qualification of lenders.

The provisions of §§ 203.1 through 203.4 and 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

ELIGIBLE MORTGAGES

§ 205.40 Mortgage forms.

(a) *Approval of forms.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction where the project is located.

(b) *Changes in form.* No changes in the approved form shall be made without the prior written approval of the Commissioner.

§ 205.42 Eligibility of property.

A mortgage to be eligible for insurance shall be on real estate held:

(a) In fee simple; or

(b) Under a lease for not less than 99 years which is renewable; or

(c) Under a lease having a term which is determined by the Commissioner as sufficient to cover the period for development of the project plus the period necessary to meet the leasehold eligibility requirements for obtaining the FHA financing of the dwelling units to be constructed upon completion of the project.

§ 205.45 Mortgage lien.

The mortgagor shall certify at the time application is made for the final insured advance of mortgage proceeds, with respect to that portion of the mortgaged property not released from the lien of the mortgage, that:

(a) The mortgage is the first lien upon that portion of the project upon which the improvements (exclusive of those involving facilities intended for public use that are in public ownership) have been made or constructed.

(b) The property upon which the improvements have been made or constructed is covered by a mortgage which is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner; and

(c) There will not be outstanding any other unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, or the improvements which have been made or constructed, except obligations approved by the Commissioner.

§ 205.47 Mortgage amortization and maximum maturity.

(a) The mortgage shall contain amortization or sinking fund provisions satisfactory to the Commissioner.

(b) The mortgage shall have a maturity not to exceed 10 years from the date of initial endorsement or such longer maturity as the Commissioner deems reasonable in each of the following instances:

(1) In the case of a privately owned system for water or sewage.

(2) In the case of a new community meeting the requirements of § 205.86.

(3) In a case where the Commissioner determines that unusual or unforseen circumstances make such longer maturity necessary in order to avoid undue hardship to the mortgagee.

§ 205.50 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

§ 205.52 Maximum mortgage amount—dollar limitation.

A mortgage or the total principal obligation of all mortgages for any one project shall at no time exceed $25 million.

§ 200.55 Maximum mortgage amount—loan-to-value limitation.

A mortgage shall involve a principal obligation not in excess of the lesser of the following:

(a) 75 percent of the Commissioner's estimated value of the property covered by the mortgage security as of the completion of the development to be financed with assistance under this part; or

(b) 50 percent of the Commissioner's estimated value of the land before development plus 90 percent of the Commissioner's estimated cost of such development.

§ 205.57 Reduced mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 205.60 Application of payments.

The mortgage shall contain a provision satisfactory to the Commissioner, setting forth the manner in which the mortgagee shall apply payments. No prepayment penalty will be permitted.

§ 205.62 Standard for acceptability.

In order for a mortgage to be acceptable for insurance, the property or project shall represent a good mortgage insurance risk.

§ 205.65 Zoning, deed or building restrictions.

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

§ 205.67 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to all of the following conditions:

(a) The Trustee shall be an approved mortgagee authorized to act in a fiduciary capacity.

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of the bonds or other obligations in all matters concerning the mortgage insurance contract.

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance. The trust indenture shall expressly authorize the Commissioner to make payment of any insurance claim to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits.

(d) The bonds or other obligations shall be issued only to holders meeting one of the following qualifications:

(1) A mortgagee approved by the Commissioner.

(2) A pension or retirement fund or a profit-sharing plan, having lawful authority to acquire the bonds or other obligations, which fund is maintained and administered by a corporation or by a governmental agency or by a trustee or trustees.

(3) A charitable or nonprofit organization.

COMMITMENT TO INSURE

§ 205.70 Issuance of commitment.

Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

§ 205.72 Types of commitment.

The commitment may provide for the insurance of advances during construction or for insurance upon completion.

§ 205.73 Term of commitment.

If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(a) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(b) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(c) The term of a commitment may be extended in such manner as the Commissioner may, from time to time, prescribe.

(d) If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of a commitment, the commitment shall expire on the 30th day.

§ 205.75 Reopening of expired commitment.

An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the

expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, shall be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

§ 205.77 Extension of commitment.

Where the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

INSURANCE OF ADVANCES

§ 205.80 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 205.82 Assurance of completion.

(a) Assurance of completion satisfactory to the Commissioner shall be furnished in one of the following forms:

(1) A bond of a surety Company satisfactory to the Commissioner on a form approved by the Commissioner. The bond shall be in the amount of 100 percent (or such lesser amount as approved by the Commissioner) of the cost of the improvements as estimated by the Commissioner.

(2) An escrow deposit with the mortgagee (or with a depository satisfactory to the mortgagee and the Commissioner) of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America in such amount and under a completion assurance agreement acceptable to the Commissioner except that FHA debentures may not be used for such deposit.

(b) The mortgagee may accept, in lieu of a cash deposit required by paragraph (a) (2) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

SPECIAL REQUIREMENTS

§ 205.85 Land development criteria.

(a) The land shall be developed in accordance with a plan that:

(1) Is acceptable to the Commissioner as providing reasonable assurance that the land development will contribute to good living conditions in the area being developed;

(2) Is consistent with a comprehensive plan which covers, or with comprehensive planning being carried on for, the area in which the land is situated and which meets criteria set forth by the Commissioner.

(b) The Commissioner shall receive assurances satisfactory to him that the area being developed will:

(1) Have a sound economic base and a long economic life;

(2) Be characterized by sound land use patterns; and

(3) Include or be served by such shopping, school, recreational, transportation, and other facilities as the Commissioner deems adequate or necessary.

(c) The land development shall be undertaken and carried out pursuant to a schedule that will assure the use of such land for the purpose for which it is developed within the shortest reasonable period of time consistent with the objectives of sound and economic community growth or urban development. The schedule shall provide specific information as to the propsed period of time in which the sale or other use of the developed land shall take place, and in which construction of residential or other buildings shall commence on the developed land.

(d) If there is no comprehensive plan which covers, or no such comprehensive plan being carried on for, the area in which the land is situated, the requirement of paragraph (a) (2) of this section is not applicable to any project covered by an insurance commitment issued on or after December 31, 1970 and before January 1, 1972.

§ 205.86 New community criteria.

A mortgage satisfying all of the other requirements of this subpart may be approved by the Commissioner for insurance as covering a project involving the development of a new community, if the following requirements are met:

(a) The construction of the new community has been approved by the local governing body of the locality where it is to be located and approved by the Governor of the State, except that the Governor's approval shall not be required if the Commissioner determines the locality has been delegated general powers of local self-government by the State.

(b) It is determined by the Secretary that the new community, in view of its size and scope, will make a substantial contribution to the sound economic growth of the area within which it is to be located in the form of:

(1) Substantial economies in the development of improved residential sites through the use of large-scale methods.

(2) Adequate housing for those who would be employed in the community or the surrounding area.

(3) Maximum accessibility from the new residential sites to industrial or other employment centers and to commercial, recreational, and cultural facilities in or near the community.

(4) Maximum accessibility to any major central city in the area.

§ 205.87 Equity requirements.

(a) *Funds and finances—insured advances.* If the commitment provides for insurance of advances during construction, the following requirements shall be met:

(1) The mortgagor shall deposit with the mortgagee, prior to initial endorsement, an amount deemed by the Commissioner to be sufficient (when added to the proceeds of the insured mortgage) to defray during the course of construction, payments for accrued taxes, hazard insurance premiums, and assessments required by the terms of the mortgage.

(2) The mortgagor shall deposit with the mortgagee, prior to initial endorsement, cash deemed by the Commissioner to be sufficient (when added to the proceeds of the insured mortgage) to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the project. The cash shall be held by the mortgagee under an appropriate agreement, approved by the Commissioner, requiring that prior to the advance of any mortgage money, all such cash be disbursed for work and material on the physical improvements, and for any other charges and expenses which are payable.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the intial service charge and which have been approved by the Commissioner shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(b) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraph (a) of this section shall be deposited with and held by the mortgagee in a special account or by an acceptable depository, designated by the mortgagee, under an appropriate agreement approved by the Commissioner.

(c) *Letter of credit.* The mortgagee may accept, in lieu of a cash deposit required by paragraphs (a) (1) and (3) of this section, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 205.90 Escrow for offsite utilities and streets.

(a) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a

specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

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

§ 205.92 Water and sewerage facilities.

(a) *Requirements in general.* The project, after development, shall be served by public systems for water supply and sewage disposal consistent with other existing or prospective systems in the area, except that private systems may be used if they meet the requirements of paragraphs (b) and (c). In all projects, the system for sewage disposal, including storm sewers and storm drainage facilities, shall not be approved by the Commissioner unless he finds that such system will not contribute to the pollution of local waterways.

(b) *Private water systems.* The Commissioner may approve the use of a privately or cooperatively owned water system if he makes each of the following determinations with respect to the system:

(1) It will be consistent with other existing or prospective systems within the area.

(2) It will be adequate to serve the needs of the area being developed.

(3) It will be regulated, during the period of ownership, by the State or a political subdivision or an agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation, rate of return, and conditions and terms of any sale or transfer.

(c) *Private sewerage systems*—(1) *Existing systems.* The Commissioner may approve the use of an existing privately or cooperatively owned sewerage system if he determines that the system will be adequate to serve the needs of the area being developed and that its operation will be regulated by the State or a political subdivision or an agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation, rate of return, and conditions and terms of any sale or transfer.

(2) *New systems.* The Commissioner may approve the use of a newly developed privately or cooperatively owned sewerage system if he makes each of the following determinations with respect to the system:

(i) Public ownership of the system is not feasible.

(ii) It will be adequate to serve the needs of the area being developed.

(iii) It will be consistent with other existing or prospective systems within the area.

(iv) It will be regulated during the period of ownership by the State or a political subdivision or any agency thereof, or in the absence of such State or local regulation, it will otherwise be regulated in a manner acceptable to the Commissioner. The regulation shall cover user rates and charges, capital structure, methods of operation, and rate of return.

(v) Adequate plans exist for the sale or transfer of the system to a local public authority under terms and conditions which are satisfactory to the Commissioner and which provide reasonable assurance the sale or transfer will eventually be made.

PREVAILING WAGE REQUIREMENTS

§ 205.95 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the Regulations of the Secretary of Labor, published in Title 29, Code of Federal Regulations, as Part 5 of Subtitle A thereof, and as amended from time to time.

§ 205.97 Ineligible contractors.

No land development contract shall be entered into with a general contractor or a subcontractor if such contractor or subcontractor (or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest) is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General pursuant to the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

§ 205.100 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest) was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General pursuant to the provisions of the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

§ 205.102 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner. The certificate shall state that the laborers and mechanics employed in the construction of the project have been paid not less than the wages prevailing in the locality for the corresponding classes of laborers and mechanics employed on construction of similar character. The prevailing wage determination shall be made by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 205.105 Discrimination prohibited.

Any contract or subcontract executed for the development of land shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

COST CERTIFICATION REQUIREMENTS

§ 205.110 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over the amounts specified in § 205.132. Under this agreement, the mortgagor shall agree to:

(1) Disclose its relationship with the general contractor, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a development contract the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the contractor;

(3) Execute a certificate prior to each insured advance showing actual amounts disbursed prior to the initial endorsement of the mortgage for insurance or since the last insured advance; and

(4) Apply any excess of mortgage proceeds over the amounts specified in § 205.132 to reduction of the outstanding balance of the principal of the mortgage, as and when directed by the Commissioner.

(b) The provisions of subparagraphs (1) and (2) of paragraph (a) of this section shall not apply where the mortgagor is the general contractor.

§ 205.112 Form of contract.

The form of contract between the mortgagor and the general contractor shall be in accordance with the following:

(a) *Lump sum contract.* If the Commissioner determines that neither the mortgagor nor any of the officers, directors, stockholders, partners or beneficiaries of the mortgagor have any interest in the general contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) *Fixed fee contract.* If the Commissioner determines that the mortgagor, its officers, directors, stockholders, partners or beneficiaries have any interest,

financial or otherwise, in the general contractor, the form of contract shall provide for payment of the actual cost of land development not to exceed an upset price and may provide for payment of a fixed fee to the general contractor which shall not exceed a reasonable allowance as established by the Commissioner, in accordance with customary practices in the area.

§ 205.115 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor, its officers, directors, stockholders, partners or beneficiaries have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor shall certify (at such times and in such form as may be prescribed by the Commissioner prior to final endorsement of the mortgage for insurance) that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 205.117 Certificate of actual cost—contents in general.

(a) *Submission of certificates.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to each insured advance.

(b) *Items to be included.* Each certificate shall show the actual cost to the mortgagor of items as follows:

(1) Development contract, where the mortgagor and the general contractor are separate entities.

(2) Construction of the improvements, where the mortgagor is the general contractor and there is no development contract.

(3) Architect's fee, engineer's fee, and land planning fees.

(4) Offsite public utilities and streets not included in computations under subparagraphs (1) and (2) of this paragraph.

(5) Organization and legal work.

(6) Other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners, or beneficiaries. Any such payments shall be deducted from the costs determined under paragraph (b) of this section.

§ 205.120 Certificate of actual cost—fixed fee or no contract.

In the case of a cost plus fixed fee contract or where the mortgagor is the general contractor and there is no development contract, the certificate of actual cost, in addition to the requirements of § 205.117, shall show the following allowances:

(a) Such general overhead items as are acceptable to the Commissioner.

(b) A reasonable allowance for the general contractor's profit as established by the Commissioner.

§ 205.122 Certificate of actual cost—subcontractor's cost.

(a) *Submission of certificates.* The Commissioner may require the mortgagor to submit a certificate of actual cost showing all amounts actually paid by a subcontractor, material supplier or equipment lessor, where it is determined by the Commissioner that an identity of interest exists between either of the following:

(1) The mortgagor or any of its officers, directors, stockholders, partners or beneficiaries and any subcontractor, material supplier, or equipment lessor.

(2) The general contractor and any subcontractor, material supplier, or equipment lessor.

(b) *Items to be included.* Each certificate shall show the amounts paid for labor, materials, subcontracts and overhead.

(c) *Items not to be included.* The certificate shall not include amounts paid for any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or beneficiaries.

§ 205.125 Contractor's certification—fixed fee contract.

A general contractor receiving a fixed fee shall certify, in form prescribed by the Commissioner, as to all actual costs paid for labor, materials, and subcontract work under the general contract. The fee of the general contractor, any kickbacks, rebates, trade discounts, or other similar payments to the general contractor or mortgagor corporation or any of its officers, directors, stockholders, partners or beneficiaries shall not be included in arriving at such actual costs.

§ 205.127 Records.

The mortgagor shall keep and maintain adequate records of all costs of any development or other cost items not representing work under the general contract and shall require the general contractor to keep similar records. Upon request by the Commissioner, such records, together with any collateral agreements, shall be made available for examination.

§ 205.130 Certificate of public accountant.

The certificates of actual cost shall be supported by certificates, when required by the Commissioner, as to accuracy by an independent Certified Public Accountant or independent public accountant, and shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 205.132 Reduction in mortgage amount.

The principal obligation of the mortgage shall be reduced at final endorsement for insurance or at such earlier times as may be required by the Commissioner, to an amount not exceeding (with respect to that portion of the land remaining under the mortgage) 50 percent of the Commissioner's estimated value of such portion of the land prior to development; plus 90 percent of the actual cost of the land development allocated by the Commissioner to such portion.

§ 205.135 Effect of agreement.

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

§ 205.137 Cost certification incontestable.

Upon the Commissioner's approval of the certification by the mortgagor as to actual costs submitted in connection with the request for the final insured advance of mortgage proceeds, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor. This provision shall not apply to any other certification by the mortgagor as to actual costs.

TITLE

§ 205.140 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 205.142 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the

mortgagee or the Secretary, as the case may be.

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

(c) Torrens or similar title certificate.

§ 205.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

§ 205.251 Incorporation by reference.

(a) All of the provisions of §§ 207.251 et seq. (Part 207, Subpart B) of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply to mortgages on a land development insured under title X of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.252 First, second and third premiums.
207.253 Adjusted premium and termination charges.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to title X of the Act.

(c) All of the definitions in § 205.1 shall apply to this subpart. In addition, as used in this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

§ 205.253 Mortgage insurance premium.

Mortgage insurance premiums shall be payable in advance by the mortgagee to the Commissioner in accordance with the following provisions:

(a) In all cases except where the mortgage cover a water and/or sewer system, the mortgage insurance premium shall be paid as follows:

(1) Upon initial endorsement of the mortgage for insurance, there shall be paid an amount equal to 2 percent of the face amount of the mortgage. Such payment shall cover the first 3 years of the mortgage insurance or the entire term of the mortgage insurance when such term does not exceed 3 years.

(2) If the mortgage term exceeds 3 years there shall be paid on the third anniversary of the initial endorsement of the mortgage for insurance, and on each succeeding anniversary date of such endorsement, an amount equal to 1 percent of the outstanding principal balance of the mortgage at the end of the previous mortgage insurance year, which shall be adjusted to give effect to reductions in the principal balance of the mortgage resulting from sale of portions of the property covered by the mortgage, but without taking into consideration delinquent payments or prepayments.

(3) If the mortgage term exceeds 3 years and contains amortization provisions, the mortgage insurance premium shall be adjusted so that subsequent mortgage insurance premiums shall be paid on the anniversary dates of the commencement of amortization rather than on the anniversary dates of the initial endorsement of the mortgage for insurance.

(b) If the mortgage covers a water and/or sewer system, the mortgage insurance premium shall be paid as follows:

(1) Upon initial endorsement of the mortgage for insurance, there shall be paid an amount equal to one-twelfth of 1 percent of the original face amount of the mortgage for each month or fraction thereof prior to the date of commencement of amortization.

(2) Upon commencement of amortization and on each anniversary date thereafter until the mortgage is paid in full (or until receipt by the Commissioner of an application for insurance benefits, or until the contract of mortgage insurance is otherwise terminated with the consent of the Commissioner), there shall be paid an amount equal to three-fourths of 1 percent of the average outstanding principal balance of the mortgage for the year following the date on which such premium becomes payable, without taking into consideration delinquent payments or prepayments.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

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207.2 Maximum fees and charges by mortgagee.

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207.261 Assignment of insured mortgages.

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207.261a Actions to be taken by mortgagee.

RIGHTS IN HOUSING FUND

Sec.
207.262 No vested right in fund.

AMENDMENTS

207.499 Effect of amendments.

AUTHORITY: The provisions of this Part 207 issued under secs. 207, 211, 52 Stat. 16, as amended, 23, as amended; 12 U.S.C. 1713, 1715b.

Subpart A—Eligibility Requirements

APPLICATIONS AND COMMITMENTS

§ 207.1 Application, commitment, and required fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless accompanied by the exhibits called for by the form.

(b) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall accompany the application for a conditional commitment.

(c) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the mortgage applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the mortgage applied for, shall also be submitted with the application for a firm commitment. The payment of a commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or constructed pursuant to the Atomic Energy Community Act of 1955, as provided in § 207.31(b)(4).

(d) *Commitment*—(1) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

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

(3) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(4) *Term of commitment.* (i) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(ii) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(iii) A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(iv) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

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

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

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

(f) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, and additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

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

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

§ 207.2 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

ELIGIBLE MORTGAGES

§ 207.3 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction

in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lien on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 207.4 Maximum mortgage amounts.

(a) *Dollar and loan-to-value limitations.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor;

(3) 90 percent of the estimated value (replacement cost if project is located in Alaska or in Guam) of the project;

(4) For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $9,900 without a bedroom.

(ii) $13,750 with one bedroom.

(iii) $16,500 with two bedrooms.

(iv) $20,350 with three bedrooms.

(v) $23,100 with four or more bedrooms.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (a)(4) of this section to not to exceed:

(1) $11,550 per family unit without a bedroom.

(2) $16,500 per family unit with one bedroom.

(3) $19,800 per family unit with two bedrooms.

(4) $24,750 per family unit with three bedrooms.

(5) $28,050 per family unit with four or more bedrooms.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in paragraphs (a)(4) and (b) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (ii) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(e) *Reduced mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

(f) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 207.5 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner, depending upon the risk involved and the general character of the project, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 207.6 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 207.7 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 207.8 Mortgage to cover the entire property.

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

§ 207.9 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan.

§ 207.10 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards

as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 207.11 Soundness of project.

No mortage shall be accepted for insurance unless the Commissioner finds that the property or project with respect to which the mortgage is executed is economically sound, except that as to mortgages covering property located in Alaska or in Guam, or in Hawaii, no mortgage shall be accepted for insurance unless the Commissioner finds that the property or project is an acceptable risk giving consideration to the acute housing shortage in Alaska, or in Guam, or in Hawaii.

§ 207.12 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 207.13 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

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

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 207.14 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 207.15 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds or other obligations shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under the contract of mortgage insurance to the Trustee, without liability or accountability to the bond holders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 207.16 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiable for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

ELIGIBLE MORTGAGORS

§ 207.17 Classification.

In order to be eligible as a mortgagor under this subpart the applicant must be:

(a) *Private mortgagors.* Any mortgagor approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(b) *Public mortgagors.* A federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under and restricted by federal or state laws or regulations of a state banking or insurance department as to rents, charges, capital structure, rate of return, or methods of operation.

SUPERVISION OF MORTGAGORS

§ 207.18 In general.

(a) In the case of an eligible mortgagor which is regulated or restricted for the purposes and in the manner provided in § 207.17(b), or in the case in which the mortgagor or mortgagee is the Alaska Housing Authority, or the Government of Guam or Hawaii or any agency or instrumentality thereof, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors: *Provided*, That the mortgagor in any such case, must have initial funds which may be considered in lieu of the equity required of other mortgagors, and such funds (which may be in the form of Government loans, grants, or subsidies or in other form) if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

(b) In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except such obligations as may be approved by the Commissioner as to terms, form and amount.

(c) In the case of a private corporation, the Commissioner's regulations or restrictions will be set forth in its certificate of incorporation or charter under which such mortgagor is created, and will be made effective through the issuance of certain shares of special stock, which stock will acquire majority voting rights in the event of default under the mortgage or violation of a provision of the charter. Such special stock or interest issued to the Commissioner, his nominee or nominees and/or the Federal Housing Administration shall be in sufficient amount to constitute under the laws of the particular state a valid special class of stock or interest and shall be issued in consideration of the payment by the Commissioner of not exceeding in the aggregate $100. Such stock shall be represented by a certificate or certificates issued in the name of the Commissioner, and/or in the name of his nominee or nominees, and/or in the name of the Federal Housing Administration, as the Commissioner shall require. In the case of a private association or trust entity, or whenever, for any reason satisfactory to the Commissioner, such regulations or restrictions are not feasible as to a particular mortgagor through the issuance of shares of special stock, such regulations or restrictions shall be effected by means of a regulatory agreement and/or other contractual documents between the Commissioner and the mortgagor in such form and in such manner as shall be satisfactory to the Commissioner. Upon the termination of all obligations of the Commissioner under his contract of mortgage insurance, or any succeeding contract or agreement covering the mortgage obligation, all regulations and restrictions of the mortgagor shall cease, the shares of special stock shall be surrendered by the Commissioner upon reimbursement of his payments therefor, plus accrued dividends, if any, thereon, and any regulatory agreement or contract shall terminate.

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(b):

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(ii) All amounts required to be deposited in the Reserve Fund for Replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held. No distributions of any kind may be made from borrowed funds.

(c) *Requirements incident to insurance of advances.* (1) The mortgagor shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to accruals for taxes, ground rates, mortgage insurance premiums, property insurance premiums, and assessments required by the terms of the mortgage:

(i) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(ii) In the case of rehabilitation, an amount satisfactory to the Commissioner.

(2) Prior to initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the construction of the project. Such funds shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such funds to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, prior to the advances of any mortgage money.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(4) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(5) Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

(6) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner.

The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

(i) Where the estimated cost of construction or rehabilitation is $500,000 or less, assurance will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners, or individuals operating as the general contractor.

(ii) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

(7) The mortgagee may accept, in lieu of a cash deposit required by subparagraphs (1), (3), (4), and (6) of this paragraph, an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

(d) *Labor standards and prevailing wage requirements.* (1) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6(b) of the Regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6(b)).

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6(b)).

(4) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

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

(e) *Rents and charges.* No charge shall be made by the mortgagor for the accommodations, facilities or services offered by the project in excess of those approved by the Commissioner in writing prior to the opening of the project for rental. In approving such charges and in passing upon applications for changes, consideration will be given to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide reasonable return on the investment consistent with providing reasonable rentals to tenants.

(f) *Methods of operation.*

(1) [Reserved]

(2) The mortgagor shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(3) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(4) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(5) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured or held by the Commissioner the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner, and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The mortgagor shall file with the Commissioner and the mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(i) Monthly occupancy reports, when required by the Commissioner;

(ii) [Reserved]

(iii) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year.

(iv) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(v) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

(g) *Mortgagor's equity investment*—(1) *Amount and deposit.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to 3 percent of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such 3 percent and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

(2) *Cutoff date.* The provisions of subparagraph (1) of this paragraph shall be applicable only to those mortgages which have received final endorsement on or before November 15, 1962.

(h) *Advance amortization.* (1) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the rental of the mortgaged property, such net income, to the extent determined by the

Commissioner, shall be applied in one or more of the following ways:

(i) To advance amortization.

(ii) To offset the cost of approved capital improvements.

(iii) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement.

(2) The provisions of subparagraph (1) of this paragraph shall be applicable to commitments issued on or after December 3, 1963, and to commitments outstanding on that date where the mortgage has not received final endorsement. The provisions of subparagraph (1) of this paragraph shall not be applicable to a project involving rehabilitation where the mortgage does not exceed $200,000.

§ 207.20 Occupancy requirements.

(a) *Family with children.* The mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project covered by the mortgage, the mortgagor will not discriminate against any family by reason of the fact that there are children in the family; and

(2) The mortgagor will not sell the project while the mortgage insurance is in effect unless the purchaser also so certifies.

(b) *Transient or hotel purposes.* The mortgagor shall certify under oath that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

§ 207.21 Racial discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

ELIGIBLE MORTGAGEES

§ 207.22 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgages under this subpart.

PROPERTY REQUIREMENTS

§ 207.23 Eligibility of property.

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

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage.

§ 207.24 Development of property.

(a) At the time the mortgage is insured the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property, designed principally for residential use, conforming to standards satisfactory to the Commissioner, and consisting of not less than eight rental dwelling units on one site and may be detached, semi-detached, or row houses, or multi-family structures; except that the Commissioner may insure a mortgage on a completed project constructed pursuant to a Commitment to Insure upon Completion, or

(b) At the time the mortgage is insured there shall be located on the mortgaged property a building or buildings, which, upon completion of proposed improvements, shall constitute a single project and provide housing accommodations designed principally for residential use, conforming to standards satisfactory to the Commissioner, and containing at least eight rental dwelling units so located in relation to one another as to effect a substantial improvement of housing standards and conditions in the neighborhood; and in either case such dwelling and other improvement, if any, must not violate any material zoning or deed restrictions applicable to the project site, and must comply with all applicable building and other governmental regulations; and any project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

ADJUSTMENT OF MORTGAGE AMOUNT

§ 207.25 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over satutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 207.26 Form of contract.

The form of contract between the mortgagor and builder shall be determined in accordance with the following:

(a) If it is established to the satisfaction of the Commissioner that neither the mortgagor nor any of the officers, directors, or stockholders of the mortgagor have any interest in the builder or contractor, there may be used a lump sum form of contract providing for payment of a specified amount.

(b) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in the builder or contractor, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a builder's fixed fee in addition thereto. The builder's fixed fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(d) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners. Where the use of a cost plus form

of contract is required by the Commissioner and it is determined by the Commissioner that an identity of interest exists between the general contractor and, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 207.27 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(1) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(2) In the case of a cost-plus-fixed-fee contract or where the mortgagor is the general contractor, the amount shown in the certificate shall include such allowance of general overhead items as are acceptable to the Commissioner plus a reasonable allowance for the builder's profit as established by the Commissioner;

(3) Architect's fee;

(4) Off-site public utilities and streets not included in the general contract;

(5) Organizational and legal work; and

(6) Other items of expense approved by the Commissioner.

(b) A builder receiving a fixed fee under a cost plus contract shall certify in a form prescribed by the Commissioner as to all actual cost paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fixed fee less any kickbacks, rebates, trade discounts, or other similar payments to the builder or mortgagor or any of its officers, directors or stockholders.

(c) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(d) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 207.28 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the applicable statutory percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 207.29 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 207.27 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable statutory percentage of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 207.30 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 207.27 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 207.27 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

OTHER ELIGIBLE MORTGAGES

§ 207.31 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this subpart, except as modified by this section shall be eligible for insurance under this subpart.

(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 Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional 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, of any housing including any additional property acquired, held, or constructed in connection with such housing or to 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, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, 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, Washington, 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 any 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 (as defined in § 203.12) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph 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 subparagraphs (1), (2), (3), and (4) of this paragraph.

(c) For the purposes of this section, an eligible mortgagor is defined as a person or legal entity acceptable to the Commissioner. Such a mortgagor may, in the discretion of the Commissioner, be (1) uncontrolled or (2) controlled in such degree and manner as the Commissioner may find desirable under the circumstances.

§ 207.31a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A Mortgage financing the repair, rehabilitation or construction 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 (other than those relating to labor standards and prevailing wages) 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.

§ 207.32 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage covering five or more rental units may be insured under this subpart pursuant to section 223(a)(7) of the act. The new mortgage shall be limited in amount and in term as follows:

(a) Except as provided in paragraph (b), the principal of the new mortgage shall not exceed the lowest of these amounts:

(1) The original principal amount of the existing insured mortgage.

(2) The unpaid principal amount of the existing insured mortgage, to which may be added—

(i) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(ii) The costs, as determined by the Commissioner, of capital improvements, upgrading or additions required to be made to the property.

(iii) Loan closing charges.

(3) 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(b) Where the mortgage to be refinanced is one of several insured mortgages covering properties which are part of a single development and the proceeds of the refinanced mortgage are to be applied to the delinquent indebtedness of one or more of the insured mortgages in such development, the principal amount of the new mortgage shall not exceed the original principal amount of the existing insured mortgage. For purposes of this paragraph, single development shall mean adjacent properties owned by the same mortgagor or an affiliate mortgagor, as determined by the Commissioner.

(c) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

§ 207.33 Eligibility of mortgages on mobile home courts or parks.

(a) All of the provisions of this subpart shall apply to insurance on mobile home courts or parks, except as provided in this section. All references in this subpart to housing for rent or sale shall mean the rental of spaces for the accommodation of mobile homes, and such appurtenances thereto as may have been approved by the Commissioner.

(b) A mortgage on a mobile home court or park may involve a principal obligation in an amount to be determined as follows:

(1) An amount not exceeding the lesser of $1 million, $2,500 per space (as defined by the Commissioner), or 90 percent of the estimated value of the property after the improvements are completed.

(2) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent the $1 million and $2,500 limitations set forth in subparagraph (1).

(3) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct mobile home courts or parks without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this paragraph, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases otherwise applicable, by more than one-half thereof.

(c) A mortgage on a mobile home court or park is not subject to the provisions of § 207.4, except that the provisions of § 207.4(c) (relating to increased mortgage amounts for high cost areas), § 207.4(e) (relating to a reduction in mortgage amount where the mortgage is on a leasehold estate) and the provisions of § 207.4(f) (relating to loans to cover 2-year operating losses) shall be applicable.

(d) A mortgage on a leasehold estate shall be eligible for insurance only if the real estate is held:

(1) On the interest of the lessee under a lease for not less than 99 years which is renewable; or

(2) Under a lease having a period of not less than 50 years to run from the date the mortgage is executed.

(e) [Reserved]

(f) A mortgage on a mobile home court or park shall have a term not in excess of 20 years from the date of insurance, except that such mortgage may have a longer term, not in excess of 40 years, if the Commissioner determines that the location of the project is not inconsistent with comprehensive planning for the area where such planning exists, or can reasonably be expected to be consistent with desirable growth patterns in the foreseeable future.

(g) [Reserved]

(h) At the time a mortgage is insured on a mobile home court or park, the mortgagor shall have constructed and completed, or shall have rehabilitated and completed, pursuant to a commitment to insure upon completion, or shall be obligated to construct and complete, or to rehabilitate and complete pursuant to a commitment to insure advances,

such court or park, designed principally for rental use for mobile homes, and conforming to standards, specifications, plans and requirements satisfactory to the Commissioner.

(i) The references in §§ 207.25 to 207.29 to "statutory limitation" and "statutory percentage" shall mean the ratio of loan to value limitation set forth in paragraph (b) of this section.

§ 207.34 Reinsurance of Commissioner-held mortgages.

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

TITLE

§ 207.35 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 207.36 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with subparagraph (2), (3), or (4) of this paragraph, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

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

(3) A Torrens or similar title certificate.

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

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

EXTENSION OF TIME

§ 207.36a Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 207.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

§ 207.251 Definitions.

As used in this subpart:

(a) The term "Commissioner" means the Federal Housing Commissioner.

(b) The term "act" means the National Housing Act, as amended.

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

(d) The term "insured mortgage" means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term "contract of insurance" means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term "mortgagor" means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

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

PREMIUMS

§ 207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of (1) one percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

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

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period

from the date of the insurance endorsement to one year following the date of the first principal payment.

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

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

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

§ 207.252a Premiums — operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of one-half of 1 percent of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), and (f) of § 207.252 shall apply to operating loss loans.

§ 207.253 Adjusted premium and termination charges.

(a) All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(1) Payment to the Commissioner of an adjusted premium or termination charge computed as follows:

(i) Two percent of the original face amount of the mortgage when the mortgage is prepaid in full or the contract of insurance is voluntarily terminated within five years from the date of the initial endorsement for insurance; or

(ii) One percent of the original face amount of the mortgage when the mortgage is prepaid in full or the contract of insurance is voluntarily terminated after five years from the date of initial endorsement for insurance; or

(iii) If at the time of prepayment in full or voluntary termination a new insured mortgage is placed on the same property and the new mortgage is less than the face amount of the original mortgage, the adjusted premium or termination charge shall be computed at the relevant percentage prescribed in subdivision (i) or (ii) of this subparagraph of the difference between the face amount of the new mortgage and the original mortgage. The provision of this subdivision (iii) shall also apply to instances where there are a series of new individually insured mortgages placed on the same property.

(iv) If a new insured mortgage or mortgages are placed on the same property within 1 year from the date of prepayment in full or voluntary termination (or within such further time as the Commissioner may approve in writing), the Commissioner shall refund to the mortgagee for the account of the mortgagor any overpayment determined by recomputing the adjusted premium or termination charge using the formula prescribed in subdivision (iii) of this subparagraph. The provision of this subdivision (iv) shall also apply to instances where there are a series of new individual insured mortgages placed on the same property.

(2) Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The adjusted premium shall be remitted to the Commissioner with the notice of prepayment. Payment shall be made either in cash or debentures at par plus accrued interest. The insurance contract shall terminate effective as of the date of the prepayment.

(3) Receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the mortgagor and the mortgagee for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

(b) In no event shall the adjusted premium charge or termination charge exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity.

(c) No adjusted premium charge shall be due the Commissioner in the following cases:

(1) Where, at the time of such prepayment, there is placed on the mortgaged property a new insured mortgage or mortgages for an amount equal to or greater than the original principal amount of the prepaid mortgage; or

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage; or

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property, including loss by condemnation or conveyance in lieu of condemnation, or a release of a part of such property, if approved by the Commissioner; or

(4) Where payment in full is made of a delinquent mortgage:

(i) On which foreclosure proceedings have been commenced; or

(ii) For the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner; or

(5) Where, at the time of such prepayment, there is placed on the property a new insured mortgage or mortgages less than the original principal amount of the prepaid mortgage: *Provided*, That the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction.

(6) Where prepayment in full is made for the purpose of converting all of the individual units of a project to family units under section 234 of the Act.

(7) Where the mortgage is paid in full from the proceeds of a direct loan granted under a program administered by the Secretary of Housing and Urban Development.

(8) Where the mortgage is paid in full by a mortgagor which is a federal, state or other governmental agency or instrumentality.

(9) Where the mortgage is paid in full after July 1, 1962 and the mortgagor certifies to the Commissioner, in a manner satisfactory to him, that the payment was made by or on behalf of a nonprofit educational institution which intends to use the property for educational purposes.

(10) Where the mortgage has been insured for 10 or more years and the Commissioner determines the following:

(i) The mortgaged property has been operated at a deficit over a substantial period and major rehabilitation will help to remedy this condition.

(ii) FHA financing for rehabilitation is not feasible.

(iii) Financing obtained to prepay the insured mortgage will also finance the necessary rehabilitation and make the project competitive with other available rentals.

(d) No termination charge shall be due the Commissioner where the termination of insurance is:

(1) In connection with a delinquent mortgage on which foreclosure proceedings have been commenced; or

(2) For the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner.

(3) Where the voluntary termination occurs for the purpose of converting all of the individual units of a project to family units under section 234 of the Act.

(4) Pursuant to a request for termination in a case where the mortgagor is a nonprofit educational institution which certifies to the Commissioner, in a manner satisfactory to him, that the property will be used for educational purposes.

(e) Upon termination of the mortgage insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (1) the date of the prepayment or (2) the effective date of the voluntary termination of the contract of insurance.

§ 207.253a Termination of insurance contract.

(a) *Reasons for termination.* The happening of any of the following events shall constitute an additional reason for terminating the contract of insurance without the payment of any adjusted premium or termination charge, in cases where the mortgagee has elected to convey the property to the Commissioner:

(1) The acquisition by the mortgagee of the mortgaged property without conveying it to the Commissioner.

(2) The acquisition of the property at the foreclosure sale by a party other than the mortgagee.

(3) The redemption of the property after foreclosure.

(4) Notice given by the mortgagee after the foreclosure and during the redemption period that it will not tender the property to the Commissioner.

(b) *Notice of termination.* No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section.

(c) *Effective termination date.* The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

INSURANCE ENDORSEMENT

§ 207.254 Insurance endorsement.

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

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

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

RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 207.255 Defaults.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage; or

(2) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(b) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

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

(d) For the purposes of this section the date of default shall be considered as:

(1) The date of the first uncorrected failure to perform a covenant or obligation; or

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

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 day grace period, the mortagee shall within 30 days thereafter notify the Commissioner in writing of such default.

(b) Notwithstanding the provision of § 207.255(b), the mortagee will be required to give notice in writing to the Commissioner of the failure of the mortgagor to comply with such covenant regardless of the fact the mortgagee may not have elected to accelerate the debt.

§ 207.256a Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives written notice of reinstatement to the Commissioner.

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement which extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, it will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256 (b), or otherwise being apprised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it shall, within 45 days thereafter, give the Commissioner written notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of such election, file its application for insurance benefits and assign, in such manner as the Commissioner may require, the original credit and security instruments to the Commissioner. In addition, the following requirements shall be met:

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of such assignment, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(2) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(3) *Items delivered by mortgagee.* The mortgagee shall deliver to the Commissioner, within 45 days after the assignment is filed for record, the items enumerated below:

(i) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(ii) All policies of title or other insurance or surety bonds or other guaranties, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the effective date of the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iii) All records, ledger cards, documents, books, papers, and accounts relating to the mortgage transaction.

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) pursuant to subparagraph (4) of this paragraph.

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

(4) *Disposition of cash items.* The following cash items shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed:

(i) Any balance of the mortgage loan not advanced to the mortgagor.

(ii) Any cash held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness.

(iii) All funds held by the mortgagee for the account of the mortgagor received pursuant to any other agreement.

(iv) The amount of any undrawn balance under a letter of credit used in lieu of a cash deposit.

(c) *Conveyance of title to Commissioner.* If the mortgagee elects to acquire and convey title to the Commissioner, the following requirements shall be met:

(1) *Alternative actions by mortgagee.* At any time within a period of 30 days after the date of the notice of such election, the mortgagee shall take one of the alternative actions in subparagraph (2) or (3) of this paragraph.

(2) *Foreclosure of mortgage.* The mortgagee may elect to commence foreclosure proceedings. If the laws of the State where the property is located do not permit institution of foreclosure within such 30-day period, foreclosure shall be commenced not less than 30 days after such action can be taken. Under such proceedings, the mortgagee shall take one of the following actions:

(i) Obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor.

(ii) Institute and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom.

(iii) Proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction.

(iv) With the prior approval of the Commissioner, exercise the power of sale under a deed of trust.

(3) *Acquisition of title and possession.* The mortgagee, with the approval of the Commissioner, may elect to acquire possession of, and title to, the mortgaged property by means other than foreclosure. With the prior approval of the Commissioner, title may be transferred directly to the Commissioner.

(4) *Notice of foreclosure.* The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion. Any developments which might delay the consummation of such proceedings shall be promptly reported to the Commissioner.

(5) *Transfer by mortgagee.* After acquiring title to and possession of the property, the mortgagee shall (within 30 days of such acquisition) transfer title and possession of the property to the Commissioner. The transfer shall be made in such manner as the Commissioner may require. On the date the deed is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such recordation.

(6) *Filing of deed and application.* The mortgagee shall file its application for insurance benefits at the time of filing for record of the deed conveying the property to the Commissioner.

(7) *Deed covenants and documents.* The deed conveying the property to the Commissioner shall contain covenants satisfactory to the Commissioner. The original deed shall be forwarded to the Commissioner as soon as received from the recording authority. The following documents shall be forwarded with the deed:

(i) A bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction or by the acceptance of a deed in lieu of foreclosure.

(ii) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction and out of the foreclosure proceedings or other means by which the property was acquired.

(iii) An assignment of any claims on account of title insurance and fire or other hazard insurance, except claims which have been released with the prior approval of the Commissioner.

(8) *Title evidence.* Evidence of title, satisfactory to the Commissioner and meeting the requirements of § 207.258a shall be furnished to the Commissioner (without expense to him) within 45 days of the filing for record of the deed conveying the property to him.

(9) *Disposition of cash items.* The provisions of paragraph (b)(4) of this section, relating to the retention or delivery of cash items, shall be applicable to cases involving the conveyance of property to the Commissioner.

§ 207.258a Title requirements.

(a) *Form of title evidence.* The title evidence submitted with a conveyance of the property to the Commissioner shall be in the form of an owner's policy of title insurance, except that, if an abstract and attorney's opinion were accepted by the Commissioner at the time of insurance, the title evidence may be in such form. The title evidence shall be effective on or after the date of the recording of the conveyance to the Commissioner.

(b) *Content of title evidence.* To be satisfactory to the Commissioner, the title evidence covering the property conveyed to him shall show the same title vested in the Commissioner as was vested in the mortgagor as of the date of the mortgage was filed for record, with the exception of such liens or other matters affecting the title as may be approved by the Commissioner.

§ 207.259 Insurance benefits.

(a) *Method of payment.* Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to him in accordance with the requirements of § 207.258, payment of insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner at the time of payment, except that where the mortgage is insured pursuant to section 223(e) of the National Housing Act such claim shall be paid in cash from the Special Risk Insurance Fund, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid by issuing debentures and by paying any balance in cash.

(b) *Amount of payment; assignment of mortgage.* If the mortgage is assigned to the Commissioner, the insurance benefits shall be paid in an amount determined as follows:

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

(i) The amount of all payments made by the mortgagee for taxes, special assessments and water rates which are liens prior to the mortgage; for insurance on the property; and for any mortgage insurance premiums paid after default.

(ii) An allowance for reasonable payments made by the mortgagee, with the approval of the Commissioner, for the completion and preservation of the property.

(iii) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such cash payment is made, except that when the mortgagee fails to meet any

one of the applicable requirements of §§ 207.256 and 207.258 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

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

(i) Any amount received by the mortgagee on account of the mortgage after the date of default.

(ii) Any net income received by the mortgagee from the property covered by the mortgage after the date of default.

(iii) The sum of the cash items retained by the mortgagee pursuant to § 207.258(b)(4), except the balance of the mortgage loan not advanced to the mortgagor.

(iv) An amount equivalent to 1 percent of the mortgage funds advanced to the mortgagor and not repaid as of the date of default, except that all or part of the 1 percent may be waived by the Commissioner if, at his request and in lieu of foreclosure, the mortgage is assigned to the Secretary.

(c) *Amount of payment; conveyance of property.* If the property is conveyed to the Commissioner, the insurance benefits shall be paid in an amount determined in accordance with paragraph (b) of this section, except that the item set forth in paragraph (b)(2)(iv) shall not be deducted.

(d) *Issuance of certificate of claim.* In addition to the insurance benefits paid under paragraph (b) or (c) of this section, a certificate of claim shall be issued to the mortgagee.

(1) In the case of an assignment of the mortgage, the certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the amount of the insurance benefits, to equal the amount the mortgagee would have received if, on the date of assignment to the Commissioner, the mortgagor had paid in full all obligations under the mortgage. Where a conveyance is involved, there shall also be included in the certificate an allowance in a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and in connection with the conveyance of the property to the Commissioner.

(2) The certificate of claim shall provide for an uncompounded annual interest increment of 3 percent to begin as of the date of either assignment or conveyance.

(e) *Issuance of debentures.* Where debentures are issued, they shall meet the following requirements:

(1) Be issued as of the date of default.

(2) Be registered as to principal and interest.

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

(4) Mature 20 years from the date thereof.

(5) Be issued in multiples of $50, and any differences not in excess of $50 between the amount of insurance benefits to which the mortgagee is entitled hereunder and the aggregate face amount of the debentures issued, shall be paid in cash by the Commissioner to the mortgagee.

(6) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
3¼	Jan. 1, 1967	Jan. 1, 1968
3⅜	Jan. 1, 1968	July 1, 1969
5⅜	July 1, 1969	Jan. 1, 1970
6⅜	Jan. 1, 1970	July 1, 1970
6¾	July 1, 1970	Jan. 1, 1971
6½	Jan. 1, 1971	July 1, 1971
5⅜	July 1, 1971	

(7) Debentures representing the portion of the claim applicable to an operating loss loan shall bear interest at the rate in effect as of the date the commitment to insure such loan was issued, or as of the date of endorsement for insurance of such loan, whichever rate is the higher, although debentures representing the portion of the claim applicable to the original mortgage may bear interest at a different rate.

§ 207.259a Waiver of title objection; mortgages formerly Commissioner-held.

If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner.

§ 207.260 Protection of mortgage security.

(a) *Annual inspection of property by mortgagee.* As long as the mortgage is insured by the Commissioner, the mortgagee shall ascertain the general physical condition of the mortgaged property in each calendar year commencing with the calendar year following completion of the project. The mortgagee shall furnish the Commissioner and the mortgagor with a copy of its inspection report, which shall contain the mortgagee's recommendations for any necessary action.

(b) *Damage to property by unreasonable use, abuse, or neglect.* If a claim for mortgage insurance benefits is filed, the Commissioner will accept an assignment of the mortgage or conveyance of the property even though the buildings or improvements thereon have been subjected to permanent or substantial damage through unreasonable use, abuse or neglect. The mortgagee shall not be held responsible for such damage and deductions therefor will not be made from mortgage insurance benefits.

(c) *Insurance of property against fire and other hazards.* The mortgaged property shall be insured against fire and other hazards as provided in the mortgage. The mortgagee shall obtain such coverage in the event the mortgagor fails to do so. If the mortgagee fails to pay any premiums necessary to keep the mortgaged premises so insured, the contract of mortgage insurance may be terminated at the election of the Commissioner.

(d) *Effect of failure to provide insurance; cancellation of insurance.* If the mortgage is assigned to the Commissioner or the property is conveyed to the Commissioner and at the time of such assignment or conveyance the property has been damaged by fire or other hazards and loss has been sustained because of failure to keep the property insured as provided in the mortgage, the amount of such loss may be deducted from the insurance benefits paid by the Commissioner, unless the following conditions are met:

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

(2) Such insurance shall have been later canceled or renewal shall have been refused by the insuring company.

(3) The mortgagee shall have notified the Commissioner within 30 days (or within such further time as the Commissioner may approve) of the cancellation of the insurance or of the refusal of the insuring company to renew the insurance. Such notification shall have been accompanied by a certification that the mortgagee's diligent efforts to obtain insurance coverage against fire and other hazards at reasonably competitive rates were unsuccessful and that it would continue its efforts to obtain adequate insurance coverage at competitive rates.

(e) *Application of insurance proceeds.* (1) In the event a loss has occurred to the mortgaged property under any policy of fire or other hazard insurance and the mortgagee has received the proceeds therefrom, it shall not exercise its option

under the mortgage to use the proceeds of such insurance for the repairing, replacing, or rebuilding of the premises, or apply them to the mortgage indebtedness, or make other disposition of such proceeds, without the prior written approval of the Commissioner.

(2) If the proceeds are applied to the mortgage with such prior written approval and result in the payment in full of the entire mortgage indebtedness, the contract of mortgage insurance made with the Commissioner shall thereupon terminate.

(3) If the Commissioner shall fail to give his approval to the use or application of such funds for either of said purposes within 30 days after written request by the mortgagee, the mortgagee may use or apply such funds for any of the purposes specified in the mortgage without the approval of the Commissioner.

ASSIGNMENTS

§ 207.261 Assignment of insured mortgages.

(a) *In general.* An approved mortgagee may assign, transfer or pledge an insured mortgage or a partial interest in an insured mortgage by way of a participation or other arrangement, in accordance with the terms and conditions prescribed in this section.

(b) *Bonds.* Bonds or other obligations issued in connection with an insured mortgage executed in the form of an indenture of trust may be transferred as provided in the trust indenture and the provisions of paragraph (g) of this section shall not be applicable to these transfers.

(c) *Transfers prior to full disbursement.* Transfers or pledges of the insured loan may be made prior to full disbursement only with the prior written approval of the Commissioner.

(d) *Transfers after full disbursement.* Transfers after full disbursement may be made only to a transferee approved by the Commissioner. Upon assumption by the transferee of all obligations under the contract of mortgage insurance, the transferor shall be released from its obligations under such contract. The transfer shall be reported to the Commissioner on a form satisfactory to the Commissioner.

(e) *Transfer of partial interest under participation agreement.* A partial interest in an insured mortgage may be transferred without obtaining the approval of the Commissioner under a participation agreement or arrangement if the following conditions are met:

(1) The insured mortgage shall be held by an approved mortgagee subject to the inspection and supervision of a governmental agency authorized by law to make periodic examination of its books and accounts, and which shall for the purposes of this section be hereinafter referred to as the "principal" mortgagee;

(2) The "principal" mortgagee shall at all times retain at least a ten percent beneficial interest in the insured mortgage up to the time of final endorsement, and at least a five percent beneficial interest thereafter;

(3) A participation or partial interest in an insured mortgage shall be issued to and held only by a holder meeting one of the following qualifications:

(i) A mortgagee approved by the Commissioner;

(ii) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which the "principal" mortgagee determines has lawful authority to acquire a partial interest in an insured mortgage under the conditions set forth in this paragraph;

(iii) A charitable or nonprofit organization.

(4) The participation agreement or arrangement, in addition to other provisions as may be agreed upon between the participants, shall provide that the "principal" mortgagee shall remain the mortgagee of record under the contract of mortgage insurance; and that the Commissioner shall have no obligation to recognize or deal with any other party except the mortgagee of record with respect to the rights, benefits and obligations of the mortgagee under the contract of insurance.

(f) *Notice not required.* No notice of any sale or transfer of a participating or partial interest shall be required, unless the insured mortgage is transferred in its entirety to a new "principal" mortgagee on the public records.

(g) *Unauthorized transfer, pledge or assignment.* The contract of insurance may, at the option of the Commissioner and under such conditions as he may prescribe, be terminated in the event of a transfer, pledge or assignment of an insured mortgage or of a partial or participating interest therein, which does not meet the requirements contained in this section.

EXTENSION OF TIME

§ 207.261a Actions to be taken by mortgagee.

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

RIGHTS IN HOUSING FUND

§ 207.262 No vested right in fund.

Neither the mortgagee nor the mortgagor shall have any vested or other right in the General Insurance Fund.

AMENDMENTS

§ 207.499 Effect of amendments.

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

PART 209—INDIVIDUAL HOMES; WAR HOUSING MORTGAGE INSURANCE [SEC. 603]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
209.251 Incorporation by reference.
209.255 Due date of initial MIP.
209.260 Adjustment of initial MIP.
209.265 Amount of annual MIP.
209.270 Pro rata adjustment of MIP upon prepayment.
209.275 Payment of delinquent interest.
209.280 Special forbearance relief—ownership of ten unit project.
209.285 Insurance benefits—conveyed properties—foreclosure costs.
209.290 Debenture interest rate.
209.295 Maturity of debentures.
209.300 Applicability to outstanding mortgages and commitments.

AUTHORITY: The provisions of this Part 209 issued under sec. 607, 55 Stat. 61; 12 U.S.C. 1742; interpret or apply sec. 603, 55 Stat. 56 as amended; 12 U.S.C. 1738.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 209.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with war housing insurance under section 603 of the National Housing Act, except:

Sec.
203.260 Due date of initial MIP.
203.268 Adjustment of initial MIP.
203.269 Pro rata payment of initial MIP.
203.275 Amount of annual MIP.
203.276 Due date of annual MIP.
203.278 Pro rata payment of annual MIP.
203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 603 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 209.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 209.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial

MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 209.265 Amount of annual MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid on the anniversary date of the beginning of amortization. It shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

§ 209.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 209.275 Payment of delinquent interest.

The mortgagee may, with the written consent of the Commissioner, apply partial payments to delinquent interest to the exclusion of prior delinquent principal payments at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled. Where the partial payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment any part of which remains unpaid.

§ 209.280 Special forbearance relief—ownership of ten unit project.

The Commissioner may consent to the mortgagee entering into a written agreement with the mortgagor providing for a postponement for a period not to exceed 1 year of that part of the monthly payment which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than 10 rental units. Such agreement shall obligate the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner. The agreement shall also obligate the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. The agreement shall in no way affect the amount of the annual MIP which shall continue to be calculated in accordance with the original amortization provisions.

§ 209.285 Insurance benefits—conveyed properties—foreclosure costs.

All of the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed properties, except that in lieu of the allowance in paragraph (f) of § 203.402 of this chapter for foreclosure costs or for the costs of acquiring the property otherwise, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, and amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

§ 209.290 Debenture interest rate.

Debentures shall bear interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year.

§ 209.295 Maturity of debentures.

Debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued on or before May 25, 1942, the debentures shall mature 3 years after the first day of July following the maturity date of the mortgage.

(b) Where the mortgage was insured pursuant to a commitment issued subsequent to May 25, 1942, the debentures shall mature 10 years after the date of issue.

§ 209.300 Applicability to outstanding mortgages and commitments.

The regulations in this part are effective as to all mortgages on which a commitment to insure under section 603 of the act is issued to an approved mortgagee on or after July 15, 1946. When ever a mortgagee so desires, the provisions of this part shall become a part of any contract of insurance heretofore made. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 603 of the act pursuant to the provisions of section 610 of such act is issued to an approved mortgagee on or after August 19, 1947.

PART 210—MULTIFAMILY PROJECTS; WAR HOUSING MORTGAGE INSURANCE [SEC. 608]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
210.251 Incorporation by reference.
210.253 Adjusted premium and termination charge rate.
210.260 Adjusted premium and termination charge not due.
210.265 Debenture interest rate and term.
210.275 Applicability to outstanding mortgages and commitments.

AUTHORITY: The provisions of this Part 210 issued under sec. 607, 55 Stat. 61, as amended; sec. 611, 62 Stat. 1271, as amended; 12 U.S.C. 1742, 1746.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 210.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to war housing multifamily project mortgages insured under section 608 of the National Housing Act except the following provisions:

Sec.
207.253 Adjusted premium and termination charges.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of this part all references in Subpart B, Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 608 of the Act.

§ 210.253 Adjusted premium and termination charge rate.

All of the provisions of § 207.253 of this chapter relating to adjusted premium and termination charges apply to mortgages insured under this part, except that the adjusted premium charge shall be at the rate of 1 percent of the original face amount of the mortgage regardless of when payment occurs.

§ 210.260 Adjusted premium and termination charge not due.

In addition to the cases listed in § 207.253 (c) and (d) of this chapter wherein no adjusted premium or termination charge is due, no such charge shall be due where the mortgagor is a nonprofit mortgagor and the mortgage interest rate was below the maximum permissible rate at the time the loan was endorsed for insurance, if the transaction is approved by the Commissioner.

§ 210.265 Debenture interest rate and term.

All of the provisions of § 207.259 of this chapter covering payment of insurance benefits shall be applicable to mortgages insured under this part, except the debentures shall have the following characteristics:

(a) They shall be dated as of one month after the date of default prescribed in § 207.255.

(b) They shall mature 10 years from the date of issue.

(c) They shall bear interest at the rates determined as follows:

(1) 2½ percent, if the mortgage was endorsed for insurance prior to July 8, 1953.

(2) 2¾ percent, if the mortgage was endorsed for insurance after July 7, 1953; except that the rate shall be 2½ percent if the mortgage was endorsed for insurance pursuant to a commitment issued after May 28, 1954.

§ 210.275 Applicability to outstanding mortgages and commitments.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 608 of the act is issued on or after August 15, 1946. The regulations in this part are also effective as to all mortgages on which a commitment to insure under section 608 of the act, pursuant to the provisions of section 610 of such act, is issued on or after August 19, 1947.

PART 211—SINGLE FAMILY PROJECT LOANS; WAR HOUSING MORTGAGE INSURANCE [SEC. 611]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
211.251 Incorporation by reference.
211.255 Due date of initial MIP.
211.260 Adjustment of initial MIP.
211.265 Amount of annual MIP.
211.270 Pro rata adjustment of MIP upon prepayment.
211.275 Insurance benefits—conveyed properties—foreclosure costs.
211.280 Debenture interest rate.
211.285 Maturity of debentures.
211.290 Applicability to outstanding mortgages and commitments.

AUTHORITY: The provisions of this Part 211 issued under sec. 607, 55 Stat. 61, as amended; sec. 611, 62 Stat. 1271, as amended; 12 U.S.C. 1742, 1748.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 211.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes released from project mortgages in connection with large scale rental and sales war housing insurance under section 611 of the National Housing Act, except the following:

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203.268 Adjustment of initial MIP.
203.269 Pro rata payment of initial MIP.
203.275 Amount of annual MIP.
203.276 Due date of annual MIP.
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203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 611 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 211.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 211.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second permium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 211.265 Amount of annual MIP.

After payment of the initial MIP and until the mortgage is paid in full or until the contract is otherwise termibenefits is received by the Commissioner or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid on the anniversary date of the beginning of amortization. It shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

§ 211.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP therefor paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 211.275 Insurance benefits—conveyed properties—foreclosure costs.

All the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed properties, except that in lieu of the allowance in paragraph (f) of § 203.402 of this chapter for foreclosure costs or for the costs of acquiring the property otherwise, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, an amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

§ 211.280 Debenture interest rate.

Debentures shall bear interest at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953, and at the rate of 2½ percent per annum if issued in exchange for property accepted for insurance pursuant to commitments issued by the Commissioner on or after May 29, 1954, payable semiannually on the first day of January and the first day of July of each year.

§ 211.285 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 211.290 Applicability to outstanding mortgages and commitments.

The regulations in this part shall be effective as to all mortgages with respect to which a commitment to insure under section 611 of the act is issued on or after the date of this part.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

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213.751 Incorporation by reference.

AUTHORITY: The provisions of this Part 213 issued under sec. 211, 52 Stat. 23, as amended, sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715b, 1715e.

Subpart A—Eligibility Requirements—Projects

DEFINITIONS

§ 213.1 Definitions.

As used in this subpart, the following terms will have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Private Mortgagor" means a private corporation or trust, formed or created with the approval of the Commissioner, or, in the case of an Investor Project, any mortgagor approved by the Commissioner, which is regulated or restricted by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

(d) "Public Mortgagor" means a corporation or trust approved by the Commissioner which is also a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation formed under and restricted by Federal or State laws or regulations of a State banking or insurance department as to rents charges, capital structure, rate of return, or methods of operation.

(e) "Purchasing Cooperative" means the mortgagor of a Management Project which has purchased the project from the mortgagor of an Investor Project.

(f) "Management Project" means a project owned by a mortgagor nonprofit cooperative ownership housing corporation or trust which restricts permanent occupancy of the project to the members

of the corporation or to the beneficiaries of the trust.

(g) "Sales Project" means a project owned by a mortgagor nonprofit housing corporation or trust which is organized for the purpose of construction of homes for members of the corporation or for beneficiaries of the trust.

(h) "Investor Project" means a project owned by a mortgagor which intends to sell the project to the mortgagor of a Management Project.

(i) "Existing Construction" means a project or projects constructed prior to the filing of an application for mortgage insurance under section 213(i) of the Act which is to be owned and operated by a Consumer Cooperative as a Management Project.

(j) "Consumer Cooperative" means:

(1) A nonprofit cooperative ownership housing corporation or trust which is the owner of an Existing Construction subject to an outstanding indebtedness and is approved by the Commissioner for refinancing the indebtedness with insured mortgage; or

(2) A nonprofit cooperative ownership housing corporation or trust organized for the purpose of purchasing an Existing Construction, the members and organizers of which do not have an identity of interest with the seller of the Existing Construction except where the Commissioner has approved such interest as being consistent with the objectives of the cooperative.

(3) A nonprofit cooperative housing corporation or trust initiated and organized by bona fide members or stockholders who are the ultimate consumers, or by a consumer group or sponsor, the members and organizers of which do not have an identity of interest with the builder or landowner and which conducts all transactions between it and the builder and the landowner on an arms-length basis.

(k) "Approved percentage" means 90 percent in the case of in Investor Project, and 97 percent in the case of a Management, Sales or Existing Construction Project.

(l) "Borrower" means the mortgagor of a management project which receives and becomes primarily obligated for the payment of a supplementary loan, and such project shall be one of the following types:

(1) A project covered by a mortgage insured under section 213 of the Act.

(2) A project purchased from the federal government which is covered by an uninsured mortgage representing a part of the purchase price.

(m) "Supplementary Loan" means an advance of funds or credit evidenced by a note pursuant to Section 213(j) of the Act.

(n) "Lender" means a financial institution meeting the requirements of §§ 203.51 through 203.54 of this chapter.

APPLICATION AND COMMITMENT

§ 213.2 Filing of application and issuance of commitment.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless accompanied by the exhibits called for by the form.

(b) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

(c) *Firm commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the mortgage will be insured. The firm commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(d) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

§ 213.3 Fees required by Commissioner.

(a) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall accompany the application for a conditional commitment.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the mortgage applied for, if such fee has not been previously submitted. A commitment fee, in an amount, which when added to the application fee, will aggregate $3 per thousand dollars of the mortgage applied for, shall also be submitted with the application for a firm commitment. The payment of a commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or constructed pursuant to the Atomic Energy Community Act of 1955, as provided in § 213.45(b)(4).

(c) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by endorsement or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

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

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

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

(f) *Transfer fee.* Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

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

§ 213.4 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 213.5 Commissioner's estimate of replacement cost and appraised value.

As a condition precedent to insurance of a mortgage on a Sales Project or an Existing Construction Project, evidence must be produced showing that, prior to any sale of the dwellings in the project and stock of the mortgagor corporation, a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost (appraised value in the case of a mortgage on an Existing Construction Project) of the property has been delivered by the seller, builder, sponsor, or such other person as may be required by the Commissioner, to the purchasers of the dwellings, and subscribers for such stock.

ELIGIBLE MORTGAGES AND LOANS

§ 213.6 Mortgage and loan requirements.

(a) *Mortgage form.* The mortgage shall be:

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

(2) Executed by a mortgagor with the qualifications as provided in this subpart.

(3) A first lien on property that conforms with the property standards prescribed by the Commissioner.

(b) *Disbursement of the mortgage.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

(c) *Management of property.* The mortgage shall provide that the mortgagor will not arrange for management of the property except in a manner and under an agreement approved by the mortgagee and the Commissioner in writing.

(d) *Operating loss loans and supplementary loans.* The lender shall obtain and present for insurance a note in a form acceptable to the Commissioner which is valid and enforceable against the borrower. In addition to the customary provisions the note shall contain the following:

(1) An acceleration clause, which at the option of the holder, operates to make the entire amount of the note due and payable in the event any installment of interest and principal is not paid within 30 days after it becomes due.

(2) On the reverse side, an endorsement panel in the form set forth in §§ 213.266 and 213.268.

§ 213.7 Maximum insurable amounts.

(a) *Management Project.* The mortgage covering a Management Project shall not exceed the lesser of the following:

(1) $20,000,000 if executed by a Private Mortgagor;

(2) $25,000,000 if executed by a Public Mortgagor;

(3) 97 percent of the Commissioner's estimate of the replacement cost of the project;

(4) For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $9,900 without a bedroom.

(ii) $13,750 with one bedroom.

(iii) $16,500 with two bedrooms.

(iv) $20,350 with three bedrooms.

(v) $23,100 with four or more bedrooms.

(b) *Investor Project.* The mortgage covering an Investor Project shall not exceed that prescribed for a Management Project, except that the percentage of replacement cost referred to shall not exceed 90 percent.

(c) *Sales Project.* The mortgage covering a Sales Project shall not exceed the lesser of the following:

(1) $12,500,000; or

(2) A sum equal to the aggregate total of the maximum allowable mortgage amounts, if separate mortgages each meeting the requirements of section 203(b)(2) of the Act relating to occupant mortgagors, were placed upon each of the single-family units comprising the project.

(d) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in paragraphs (a)(4), (c)(2) and (g) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as the Commissioner finds may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(e) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; plus

(ii) Such portion of the outstanding indebtedness as does not exceed the approved percentage of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed the approved percentage of:

(i) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(ii) The actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(f) *Reduced mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement

cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

(g) *Increased mortgage amount—elevator type structures.* (1) $11,550 per family unit without a bedroom.

(2) $16,500 per family unit with one bedroom.

(3) $19,800 per family unit with two bedrooms.

(4) $24,750 per family unit with three bedrooms.

(5) $28,050 per family unit with four or more bedrooms.

(h) *Existing Construction.* A mortgage covering Existing Construction shall involve a principal obligation not in excess of the approved percentage of the Commisioner's appraised value for continued use as a cooperative, including therein such Commissioner required or approved repairs, improvements, alterations and additions, if any, as do not constitute rehabilitation of the project as determined by the Commissioner; provided, the insured mortgage shall be subject to the following further limitations:

(1) If the insured mortgage is to include the cost of refinancing an existing mortgage or mortgages acceptable to the Commissioner, the amount of the insured mortgage shall not exceed an amount equal to the outstanding balance of the existing mortgage or the total of the outstanding balances of the existing mortgages, plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement;

(2) If the Existing Construction project is to be acquired, the mortgage shall not exceed the purchase price and costs related thereto as approved by the Commissioner plus the contract cost of such Commissioner required or approved repairs, improvements, alterations and additions, if any. If the principal obligation of the mortgage exceeds this amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement.

(i) *Commercial and community facilities.* (1) A Management or an Investor Project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(2) A Sales Project may include such community facilities as the Commissioner deems adequate to serve the occupants.

(3) The maximum mortgage amount for mortgages issued under this part may be increased by such amount as the Commissioner deems appropriate to provide for the inclusion of commercial or community facilities except that a mortgage on a Sales Project shall not be increased to provide for commercial facilities. The total mortgage amount shall not exceed the ratios of loan to replacement cost or value specified in this section because of the inclusion of commercial or community facilities.

(j) *Mortgagor's minimum investment—Sales Projects.* At the time a mortgage executed by a mortgagor of a Sales Project is insured, the mortgagor shall have paid on account of the project in cash or its equivalent an amount, if any, approved and determined by the Commissioner to be the required minimum investment. At the time a mortgage is executed each member or stockholder shall have paid the amount required by § 213.509(b). With respect to applications received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

(k) *Loans to cover 2-year operating loss—(1) Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 213.10 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(l) *Supplementary loans.* The supplementary loan shall not exceed an amount which, when added to the total unpaid balance of all outstanding mortgage indebtedness on the property plus loans insured by the Commissioner on the property, creates a total outstanding indebtedness equal to the original principal obligation of the mortgage, except as follows:

(1) If improvements or additional community facilities are involved, the outstanding indebtedness may be increased by an amount which the Commissioner estimates to be equal to 97 percent of the value of such improvements or additional facilities. The loan for improvements or additional community facilities shall not exceed the lesser of the estimated cost or actual cost, as determined by the Commissioner. The outstanding indebtedness thereby created may exceed the original principal obligation of the mortgage if it does not exceed the applicable limits prescribed in paragraphs (a) through (g) of this section.

(2) If the financing of cooperative purchases and resales of memberships are involved, the loan shall not exceed an amount, approved by the Commissioner, as needed for such purposes.

(m) *Reduction of supplementary loan.* If the supplementary loan exceeds the prescribed maximum amount, the loan shall be reduced by the amount of such excess prior to final endorsement.

§ 213.8 Amortization period.

(a) The mortgage or supplementary loan shall have a maturity and shall contain amortization provisions satisfactory to the Commissioner.

(b) Mortgage maturity shall not exceed 40 years from the date of the beginning of amortization of the mortgage. In the case of a sales project mortgage maturity shall not exceed 35 years from the date of the beginning of amortization of the mortgage.

(c) Except as provided in paragraph (d) of this section, supplementary loan maturity shall not exceed the remaining term of the mortgage covering the management project.

(d) In the case of a project covered by an uninsured mortgage dated more than 20 years prior to the date of the commitment to insure a supplementary loan, the supplementary loan may have a maturity date up to 10 years in excess of the remaining term of the uninsured mortgage, but not more than 40 years from the commencement of amortization of such uninsured mortgage, if such loan is made to finance project repairs or improvements of such magnitude that the Commissioner deems them to be a major rehabilitation or modernization of the project.

§ 213.9 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 213.10 Maximum interest rate.

(a) The mortgage or a supplementary loan shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, or the lender and the borrower, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for

commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage or supplementary loan outstanding on the due date of each installment.

§ 213.11 Mortgage to cover the entire property.

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

§ 213.12 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan.

§ 213.13 Covenant for fire insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner at the time of completion of the entire project or units thereof. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as interests may appear.

§ 213.14 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 213.15 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

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

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 213.16 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither it nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

§ 213.17 Mortgage release provisions.

A mortgage executed by a mortgagor of a Sales Type Project shall provide that at any time after the completion of the construction of the project, the property underlying such mortgage may be released in whole or in part upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 213.18 Prepayment privilege; prepayment and late charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgagee may include a provision for such additional prepayment charge as may be agreed upon between the mortgagor and mortgagee, except that no such charge shall be made for a prepayment which does not exceed 15 percent of the original principal amount of the mortgage in any one calendar year or which results from:

(1) A payment requirement of the Commissioner;

(2) Release of individual properties in accordance with the provisions of a mortgage in a Sales Project;

(3) Sale of an Investor Project within 2 years after its completion to a Purchasing Cooperative unless the Commissioner shall require the payment of such additional charge.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a "late charge," not to exceed 2 cents for each dollar of each payment to interest and/or principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 213.19 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner:

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

ELIGIBLE MORTGAGORS

§ 213.20 Eligibility of mortgagors.

(a) In order to be eligible under this part, an applicant shall be a Private or Public Mortgagor of:

(1) A Management Project;

(2) A Sales Project;

(3) An Investor Project; or

(4) An Existing Construction Project.

(b) A Public Mortgagor may be an eligible mortgagor without regulation or restriction by the Commissioner as to rents, sales, charges, capital structure, rate of return, and methods of operation.

SUPERVISION OF MORTGAGORS

§ 213.21 Liens.

If a Public Mortgagor, or the Alaska Housing Authority, or the Government of Guam or Hawaii, or any agency or instrumentality thereof is the mortgagor, liens inferior to the lien of the insured mortgage may be allowed against properties of such mortgagors. The mortgagor in such case shall have initial funds which may be considered in lieu of the equity required of other mortgagors and such funds, which may be in the form of Government grants, loans, or subsidies, or in other form, if sufficient in amount, will be considered satisfactory provided they do not create a lien against the property prior to that of the insured mortgage.

§ 213.22 Obligations of mortgagor.

In all other cases a mortgagor must certify at final endorsement of the loan for insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there are not outstanding any other unpaid obligations, except such obligations as have been approved by the Commissioner as to terms, form, and amount.

§ 213.23 Regulation and restriction of mortgagors.

(a) *Preferred stock or regulatory agreement.* The regulation or restriction of Private Mortgagors will be provided for in the certificate of incorporation or other instrument under which the mortgagor is created, hereinafter referred to as the "charter," and will be made effective though a regulatory agreement, or the issuance of preferred stock (or membership) which will enable the Commissioner to exercise majority voting rights in the event of violation of a provision of the charter or (except as to the mortgagor of an Investor Project) at any time during the period between initial and final endorsement for mortgage insurance by the Commissioner whether or not such violation has occurred. Such stock shall be issued in a manner prescribed by the Commissioner in consideration of the payment by the Commissioner of not exceeding in the aggregate $100.

(b) *Rights of the Commissioner.* By the exercise of the preferred stock voting rights, the Commissioner may remove the existing directors of the mortgagor corporation and elect new directors to serve in their place. Directors so elected by the Commissioner, in the event of a violation, shall serve only for a period coexistent with the duration of such violation or until the Commissioner is assured in a manner satisfactory to him against future violations of a similar nature. Upon the termination of the contract of insurance or any succeeding contract or agreement covering the mortgage obligation, all regulation and restriction of the mortgagor shall terminate and the shares of special stock or other evidence of beneficial interest shall be surrendered by the Commissioner upon reimbursement of his payment therefor.

(c) *Supplementary loans.* Prior to the insurance of a supplementary loan, the mortgagor of a management project shall amend its certificate of incorporation or regulatory agreement in such manner as the Commissioner may require.

§ 213.24 Issuance of stock.

Shares of capital stock, either with or without par value, or certificates of membership, or such evidences of interest in the case of a trust, may be issued if approved by the Commissioner. Such stock or interest, together with paid-in surplus, if any, shall represent the capital investment.

§ 213.25 Patronage refunds.

Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be distributed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

§ 213.26 Working capital.

(a) The amount of working capital, if any, required by the Commissioner to be deposited by the mortgagor with the mortgagee or in a depository satisfactory to the mortgagee and under its control, shall not exceed 2 percent of the original amount of the mortgage. Disbursement from such deposit shall be made only in a manner prescribed by the Commissioner.

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

§ 213.27 Assurances of completion.

(a) Prior to initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the construction of the project. Such funds shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such funds to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, prior to the advance of any mortgage money.

(b) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(c) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

(d) Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

(e) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an

agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, assurance will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners or individuals operating as the general contractor.

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

(f) (1) For a supplementary loan involving improvements, repairs or the financing of community facilities, the Commissioner may require such assurance of completion as he deems necessary.

(2) A supplementary loan may be required to be secured in a manner satisfactory to the Commissioner. The security may take the form of collateral security, a modification of existing instruments and title evidence or such other form as may be prescribed by the Commissioner.

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

§ 213.28 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6(b) of the regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6(b)).

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.6(b)).

(d) No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(e) Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

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

§ 213.29 Rents and charges.

The mortgagor shall not permit occupancy except in accordance with the scheduled of charges and under an Occupancy Agreement or lease approved by the Commissioner.

§ 213.30 Methods of operation.

(a) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such, nor to any person or corporation for supervisory or managerial services. No compensation shall be paid by the corporation to any employee in excess of an amount agreed upon by the Commissioner and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation, except on account of approved occupancy charges.

(b) The corporation shall maintain its project, the grounds, buildings, and equipment appurtenant thereto, in good repair and in such condition as will preserve the health and safety of its occupants.

(c) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee so long as the mortgage insurance is in force. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter.

(d) A General Operating Reserve shall also be established and maintained so long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter.

(e) The corporation shall not, without prior approval of the Commissioner, incur liabilities (other than the insured mortgage) in excess of an amount to be specified in the charter.

(f) The corporation, its property equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(g) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the corporation will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that so long as the mortgage is insured by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner, will be in such form as to permit a speedy and effective audit, and, as may otherwise be prescribed by the Commissioner, will be maintained for such periods of time as may be prescribed by the Commissioner and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The corporation shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the corporation as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly or quarterly operating reports as and when required by the Commissioner;

(2) A semi-annual financial statement within sixty (60) days after the semi-annual period when required by the Commissioner;

(3) Annual reports prepared by a certified public accountant or an independent public accountant, within sixty (60) days after the end of each fiscal year;

(4) Specific answers to questions upon which information is desired from time to time relative to the operation and condition of the property and the status of the insured mortgage;

(5) Copies of minutes of stockholders' meetings certified to by the Secretary of the corporation, within thirty (30) days after such meetings and, when requested

by the Commissioner, copies of minutes of directors' meetings.

(h) Where the mortgagor obtains a supplementary loan to purchase and resell memberships, downpayments made by purchasers of memberships shall not be less than the downpayments requested in the original sales of memberships.

§ 213.31 Exceptions and special provisions.

(a) A Public Mortgagor shall not be subject to regulation and restriction by the Commissioner with respect to matters set forth in §§ 213.24, 213.25, 213.29, and 213.30.

(b) If the mortgage is to be insured after completion of the improvements, the mortgagor shall not be subject to the requirement of § 213.27.

(c) In addition to the provisions of this part, the mortgagor of an Investor Project shall be subject to the provisions of § 207.19(b), (Rate of return), § 207.19 (e), (Rent and charges), and § 207.26, (Form of contract), of this chapter. Such mortgagor shall not be subject to the provisions of §§ 213.25, 213.30(d), and 213.34.

(d) If the mortgage to be insured covers Existing Construction, §§ 213.33, 213.34, 213.35, 213.36, and 213.38 shall not be applicable.

(e) The provisions of § 213.27 shall apply to the mortgage covering Existing Construction only where Commissioner required or approved repairs, improvements, alterations, and additions are involved and insured advances are to be made. In such cases, assurance of completion of the project shall be deemed to refer to assurance of completion of such repairs, improvements, alterations, and additions.

(f) The provisions of § 213.28 shall apply to the mortgage covering Existing Construction only to the extent that Commissioner required or approved repairs, improvements, alterations, and additions are involved and reference therein relating to contracts, subcontracts, and the construction of the project shall be deemed to refer to the construction of such repairs, improvements, alterations, and additions.

(g) The provisions of § 213.28 shall not apply to a mortgage covering Existing Construction which covering Existing Construction which does not involve Commissioner required or approved repairs, improvements, alterations, and additions, except that as to such Existing Construction where the construction of the project or projects was commenced after September 23, 1959, inspection by the Commissioner and compliance with the provisions of section 212 of the Act relating to prevailing wage requirements shall be a prerequisite of mortgage insurance.

(h) The provisions of § 213.28 shall not apply to a supplementary loan covering the purchase of an existing community facility.

(i) Part 213 sections and portions of sections applicable to supplementary loans are: §§ 213.1(a), (b), (f), (l), (m), and (n); 213.2; 213.3; 213.4; 213.6(d); 213.7 (l) and (m); 213.8; 213.9(a); 213.10; 213.18 (a), (b)(1), and (c); 213.27(e); 213.28 (a) through (f); and 213.39.

In the foregoing provisions, unless otherwise indicated:

(1) "mortgage" shall mean "supplementary loan."

(2) "mortgagee" shall mean "lender."

(3) "mortgagor" shall mean "borrower."

(4) "project" shall mean "improvements, repairs, or community facilities."

§ 213.32 Certificate of mortgagor regarding use of property for transient or hotel purposes.

The mortgagor shall certify under oath that, so long as the mortgage is insured, the mortgagor will not rent, permit the rental, or permit the offering for rental, of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days, or (b) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

ADJUSTMENT OF MORTGAGE AMOUNT

§ 213.33 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 213.34 Form of contract.

The form of contract between the mortgagor of a Management Type Project and builder shall be determined in accordance with the following:

(a) *Non-identity of interest.* If it is found by the Commissioner that: (1) no identity of interest exists between the mortgagor or any of its officers, directors or stockholders and the general contractor, and (2) a cost plus form of contract is not required in the interests of the Commissioner; there may be used a lump sum form of contract.

(b) *Identity of interest.* If the Commissioner does not make the findings described in paragraph (a) of this section, the form of contract shall provide for payment of the actual cost of construction, not to exceed an upset price and may provide for payment of a specified builder's fee in addition thereto. The builder's fee shall not exceed a reasonable allowance therefor as established by the Commissioner, in accordance with customary practices in the area.

(c) *Identity of interest—subcontractor.* If it is found by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors or stockholders and any subcontractor or material supplier, the mortgagor and the general contractor must certify in a form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 213.35 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commisioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(1) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(2) In the case of a cost plus-fixed fee contract or where the mortgagor is the general contractor, the amount shown in the certificate shall include such allowance of general overhead items as are acceptable to the Commissioner plus a reasonable allowance for the builder's profit as established by the Commissioner.

(3) Architect's fee;

(4) Off-site public utilities and streets not included in the general contract;

(5) Organizational and legal work; and

(6) Other items of expense approved by the Commissioner.

(b) (1) Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of

the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(2) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

(c) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(d) The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 213.36 Adjustment resulting from cost certification.

Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost, provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements. If the principal obligation of the mortgage exceeds the approved percentage of this total amount, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 213.37 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with either paragraph (a) or paragraph (b) of § 213.35 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds will be used to finance the purchase of the land or structures involved the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or the approved percentage of the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value, of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the approved percentage of this amount, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

§ 213.38 Requisites of agreement and certification.

(a) Any agreement, undertaking, statement or certification required by § 213.35 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

(b) Upon the Commissioner's approval of the mortgagor's certification as required by § 213.35 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

ELIGIBLE MORTGAGEES AND LENDERS

§ 213.39 Qualifications.

The provisions of §§ 203.1 to 203.4, 203.6 to 203.9, and 203.51 through 203.54 of this chapter shall apply and govern the eligibility, qualifications and requirements of mortgagees and lenders under this subpart.

PROPERTY REQUIREMENTS

§ 213.40 Eligibility of property.

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

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed, or

(4) Under a lease executed by a government agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage shall be held by an eligible mortgagor as herein defined and shall at the time the mortgage is insured be free and clear of all liens other than that of such mortgage except as otherwise provided in this subpart.

§ 213.42 Minimum number of units.

The project shall consist of not less than five dwelling units which may be detached, semidetached, or row house, or multifamily structures. In the case of a Sales Project, such units shall be single-family dwellings.

TITLE

§ 213.43 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 213.44 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with subparagraph (2), (3), or (4) of this paragraph, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the

mortgagee or the Secretary, as the case may be.

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

(3) A Torrens or similar title certificate.

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

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

OTHER ELIGIBLE MORTGAGES

§ 213.45 Eligibility of miscellaneous type mortgages.

(a) A mortgage executed by a mortgagor of a Management Type project covering five or more units and which meets the requirements of this part, except as modified by this section shall be eligible for insurance under this part.

(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 Laws 9, 73, or 353, Seventy-seventh Congress, as amended (including any additional 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, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to 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, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, 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, Washington, 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 (as defined in § 203.12 of this chapter) their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph 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 subparagraphs (1), (2), (3), and (4) of this paragraph.

(c) [Reserved]

(d) A mortgage given to refinance an existing mortgage insured under the act may be insured under this subpart pursuant to section 223(a)(7) of the act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added—

(*a*) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(*b*) The costs, as determined by the Commissioner, of capital improvements, upgrading or additions required to be made to the property.

(*c*) Loan closing charges.

(iii) 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

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

§ 213.45a 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 (other than those relating to labor standards and prevailing wages) 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 lower 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.

EXTENSION OF TIME AND PROTECTION OF WORK IN PROCESS

§ 213.46 Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 213.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations—Projects

§ 213.251 Incorporation by reference.

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

Sec.
207.251 Definitions.
207.252 First, second and third premiums.
207.253 Adjusted premium charge.
207.254 Form of endorsement.

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

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

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

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

§ 213.252 Definitions.

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

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

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

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

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

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

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

§ 213.253 Premiums upon initial endorsement.

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

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

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

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

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

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

(2) If the date of the first principal payment of a mortgage is more than one year following the date of the initial insurance endorsement and the mortgage is paid in full prior to the date of such first principal payment, the first and second premiums collected shall be adjusted so that the aggregate of the two premiums shall equal the sum of (i) one percent of the average outstanding principal obligation of the mortgage for the year following the date of the initial insurance endorsement, and (ii) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial endorsement to the date the mortgage was paid in full.

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

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

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

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

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

outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

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

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

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

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

§ 213.256 Premiums; insurance upon completion.

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

(2) Where the mortgage is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion and is paid in full prior to the date of the first principal payment, the first and only premium collected shall be adjusted so that the total premium shall equal one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to the date the mortgage was paid in full.

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

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

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

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

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

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

§ 213.258 Subsequent annual premiums.

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

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

§ 213.259 Computation of subsequent annual premiums.

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

§ 213.260 Allowable methods of premium payment.

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

§ 213.261 Termination of mortgage insurance—prepayment in full and voluntary termination—investor project.

All of the provisions of § 207.253 of this chapter shall apply to investor project mortgages, except that no adjusted premium charge shall be due the Commissioner where the investor project mortgage is paid in full prior to maturity as a result of a sale of the investor project to a purchasing cooperative.

§ 213.262 Termination of mortgage insurance—prepayment in full—management, purchasing cooperative, sales and existing construction project mortgages.

The contract of mortgage insurance shall be terminated if the principal of a management, purchasing cooperative, sales or existing construction project mortgage is paid in full prior to maturity. The termination shall become effective as of the date of such prepayment upon compliance with the following requirement:

(a) *Adjusted premium charge.* (1) Where the prepayment in full occurs before the tenth anniversary of the date the mortgage was first endorsed for insurance, the mortgagee shall pay the Commissioner an adjusted premium charge computed as follows:

(i) Two percent of the original face amount of the mortgage where the mortgage is prepaid in full prior to maturity and within five years from the date of the initial endorsement for insurance.

(ii) One percent of the original face amount of the mortgage where the mortgage is prepaid in full prior to maturity and after five years from the date of the initial endorsement for insurance.

(iii) If at the time of prepayment in full a new insured mortgage is placed on the same property and the new mortgage is less than the face amount of the original mortgage, the adjusted premium shall be computed at the relevant percentage prescribed in subdivision (i) or (ii) of this subparagraph of the difference between the face amount of the new mortgage and the original mortgage. The provision of this subdivision (iii) shall also apply to instances where there are a series of new individually insured mortgages placed on the same property.

(iv) If new insured mortgages are placed on the same property within 1 year from the date of prepayment in full, the Commissioner shall refund to the mortgagee for the account of the mortgagor any overpayment determined by recomputing the adjusted premium using the formula prescribed in subdivision (iii) of this subparagraph. The provision of this subdivision (iv) shall also

apply to instances where there are a series of new individually insured mortgages placed on the same property.

(a) The insured mortgage is paid in full with or from the proceeds of a new insured mortgage, or mortgages having an aggregate amount less than the original principal amount of the mortgage on the same property; or

(b) The Commissioner has accepted an adjusted premium charge under an agreement providing that if new insured mortgages are placed on part or all of the property, within a period of time not to exceed one year from the date of prepayment, the adjusted premium charge previously collected will be refunded in whole or in part. In the event of the acceptance of such agreement the refund, if any, shall be computed only after the termination of the agreement or after the sale of all property or properties, whichever occurs first, and no refund shall be made prior to such computation.

(2) The adjusted premium charge shall not exceed the aggregate amount of mortgage insurance premium which would have been payable if the mortgage had continued to be insured until the tenth anniversary of the date the mortgage was first endorsed for insurance.

(3) The adjusted premium shall be remitted to the Commissioner with the notice or prepayment. Payment shall be made either in cash or debentures at par plus accrued interested.

(b) *Exceptions to adjusted premium charge.* No adjusted premium charge shall be due the Commissioner in any of the following cases:

(1) Where the mortgage is paid in full with or from the proceeds of a new insured mortgage or mortages having an aggregate amount equal to or greater than the original principal amount of the prepaid mortgage.

(2) Where the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year fifteen percent of the original face amount of the mortgage.

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for damage to the mortgaged property.

(4) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for the release of a part of the insured property, if the transaction is approved by the Commissioner.

(5) Where payment in full is made on a delinquent mortgage on which foreclosure proceedings have been commenced, if the transaction is approved by the Commissioner.

(6) Where payment in full is made on a delinquent mortgage for the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner.

(7) Where at the time of prepayment in full there is placed on the property a new insured mortgage or mortgages in an amount or amounts less than the original principal amount of the mortgage, if the Commissioner finds that the collection of such charge would be inequitable under the particular circumstances of the transaction.

(8) Where prepayment in full is made on or after April 20, 1962 and following the tenth anniversary of the date the mortgage was first endorsed for insurance.

(9) Where a sales project mortgage is paid in full in connection with the release of the individual dwelling units from the project mortgage and insured mortgages are placed on all of the released dwelling units.

(10) Where the mortgage is paid in full by a mortgagor which is a federal, state or other governmental agency or instrumentality.

(11) Where the mortgage is paid in full after July 1, 1962 and the mortgagor certifies to the Commissioner, in a manner satisfactory to him, that the payment was made by or on behalf of a nonprofit educational institution which intends to use the property for educational purposes.

(12) Where the mortgage has been insured for 10 or more years and the Commissioner determines the following:

(i) The mortgaged property has been operated at a deficit over a substantial period and major rehabilitation will help to remedy this condition.

(ii) FHA financing for rehabilitation is not feasible.

(iii) Financing obtained to prepay the insured mortgage will also finance the necessary rehabilitation and make the project competitive with other available rentals.

(c) *Notice of prepayment.* Written notice shall be given by the mortgagee to the Commissioner, on a form prescribed by the Commissioner, within 30 days after prepayment in full of the mortgage.

§ 213.263 Termination of mortgage insurance—voluntary termination—management, purchasing cooperative, sales, and existing construction project mortgages.

(a) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a request, on a form prescribed by the Commissioner, by the mortgagor and the mortgagee of any management purchasing cooperative, sales or existing construction project mortgage, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met.

(b) *Termination charge.* (1) Where the Commissioner receives a request for voluntary termination of the mortgage insurance before the tenth anniversary of the date the mortgage was first endorsed for insurance, the mortgagee shall pay the Commissioner a termination charge computed as follows:

(i) Two percent of the original face amount of the mortgage where the mortgage insurance is terminated prior to the maturity of the mortgage and within five years from the date of the initial endorsement for insurance.

(ii) One percent of the original face amount of the mortgage where the mortgage insurance is terminated prior to the maturity of the mortgage and after five years from the date of the initial endorsement for insurance.

(iii) If at the time of voluntary termination a new insured mortgage is placed on the same property and the new mortgage is less than the face amount of the original mortgage, the termination charge shall be computed at the relevant percentage prescribed in subdivision (i) or (ii) of this subparagraph of the difference between the face amount of the new mortgage and the original mortgage. The provision of this subdivision (iii) shall also apply to instances where there are a series of new individually insured mortgages placed on the same property.

(iv) If new insured mortgages are placed on the same property within 1 year from the voluntary termination date, the Commissioner shall refund to the mortgagee for the account of the mortgagor any overpayment determined by recomputing the termination charge using the formula prescribed in subdivision (iii) of this subparagraph. The provision of this subdivision (iv) shall also apply to instances where there are a series of new individually insured mortgages placed on the same property.

(2) The termination charge shall not exceed the aggregate amount of mortgage insurance premium which would have been payable if the mortgage had continued to be insured until the tenth anniversary of the date the mortgage was first endorsed for insurance.

(c) *Exceptions to termination charge.* The mortgage insurance contract may be voluntarily terminated without payment of a termination charge if:

(1) The mortgage is delinquent and termination of insurance is for the purpose of avoiding foreclosure if the transaction is approved by the Commissioner.

(2) Foreclosure proceedings have been instituted.

(3) The request for voluntary termination of the mortgage insurance is received by the Commissioner on or after the tenth anniversary of the date the mortgage was first endorsed for insurance.

(4) Where the voluntary termination occurs in connection with the release of the individual dwelling units from the project mortgage and insured mortgages are placed on all of the released dwelling units.

§ 213.264 Termination of insurance—prepayment in full and voluntary termination—supplementary loans.

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

the prepayment. The insurance termination shall become effective as of the date of the prepayment. No adjusted premium charge shall be due the Commissioner in connection with such prepayment.

(b) *Voluntary termination.* The contract of insurance shall be voluntarily terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the lender and the borrower for such termination, accompanied by a submission of the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met. No termination charge shall be due the Commissioner in connection with such termination.

§ 213.265 Refunds upon prepayment in full or voluntary termination.

(a) Upon termination of the mortgage or supplementary loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the mortgagee or lender for the account of the mortgagor or borrower an amount equal to the pro rata portion of the current annual mortgage or supplementary loan insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (1) the date of the prepayment or (2) the effective date of the voluntary termination of the contract of insurance.

(b) Where a mortgage covering an Investor Sponsored project is modified and consolidated with the mortgage of a purchasing nonprofit cooperative housing corporation or trust, it shall be deemed to be paid in full for purposes of this subpart as of the date of such modification and consolidation.

§ 213.266 Initial insurance endorsement.

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

§ 213.266a Insurance fund obligations.

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

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

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

§ 213.267 Effect of insurance endorsement.

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

§ 213.268 Final insurance endorsement.

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

§ 213.269 Endorsement of supplementary loans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Claim computation.* Upon an acceptable assignment of the note and security instrument, the Commissioner shall pay the claim of the lender in cash, in debentures or in a combination of both, as determined by the Commissioner at the time of payment. The payment

shall be in an amount equal to the unpaid principal balance of the supplementary loan plus:

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

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

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

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

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

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

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

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

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

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

COOPERATIVE MANAGEMENT HOUSING INSURANCE AND DISTRIBUTIVE SHARES

§ 213.275 Nature of the Cooperative Management Housing Insurance Fund.

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

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

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

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

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

§ 213.278 Distribution of distributive share.

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

§ 213.279 Maximum amount of distributive share.

In no event shall a distributive share of the Participating Reserve Account exceed the aggregate paid scheduled annual premiums of the mortgagor paid to the year of termination of the insurance or to the year of payment of the share, if paid prior to termination.

§ 213.280 Finality of determination.

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

Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

DEFINITIONS

§ 213.501 Definitions.

(a) The term "project mortgage" means a blanket mortgage insured under section 213 of the Act, covering a group of not less than five single-family dwellings.

(b) The terms "mortgage" and "individual mortgage" means a mortgage covering an individual single-family dwelling which has been released from the project mortgage.

(c) The definitions contained in § 213.1 of this subchapter shall apply to this subpart.

APPROVAL OF MORTGAGEES

§ 213.502 Qualification of lenders.

The provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

APPLICATION AND COMMITMENT

§ 213.503 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 213.504 Form of application.

The application must be made upon a standard form prescribed by the Commissioner.

§ 213.505 Approval and commitment.

Upon approval of an application, acceptance of the mortgage for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 213.506 Builder's warranty.

The seller or builder or such other person as the Commissioner may require shall, as a prerequisite to insurance, deliver to the purchaser a warranty in form satisfactory to the Commissioner warranting that the dwelling is 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 the maximum insurable mortgage amount.

§ 213.506a Certificate of nondiscrimination by seller.

(a) An application for insurance involving the sale of a dwelling unit not previously owner-occupied shall be accompanied by a certificate, in a form satisfactory to the Commissioner, signed by the seller establishing that such seller does not and will not discriminate in the sale of properties to prospective purchasers because of their race, color, creed or national origin.

(b) The provisions of paragraph (a) of this section shall not apply:

(1) Where the property involved is being released from a project for which preapplication analysis has been requested and the statement relating to nondiscrimination has been furnished as required by the provisions of § 200.320 of this chapter.

(2) Under such other circumstances as may be approved by the Commissioner.

(c) The provisions of this section shall be applicable to applications filed on or after November 1, 1963.

ELIGIBLE MORTGAGES

§ 213.507 Form, lien.

The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, by a mortgagor with the qualifications set forth in this part, must be a first lien upon property that conforms with the property standards prescribed by the Commissioner, and 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.

§ 213.508 Releases from project mortgage.

The property covered by the mortgage must have been included as part of a Sales Project and must have located thereon a single-family dwelling, and the mortgage must have been executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

§ 213.509 Maximum amount of mortgage and mortgagor's minimum investment.

(a) The mortgage must involve a principal obligation in multiples of $50 and must not exceed the unpaid balance of the project mortgage allocable to the property offered as security.

(b) *Mortgagor's minimum investment.* At the time the mortgage is insured the mortgagor shall have paid on account of the property in cash or its equivalent, an amount, if any, approved and determined by the Commissioner to be the required minimum investment. The mortgagor's cash investment in the mortgagor corporation under the project mortgage may be credited against the amount required by this paragraph. If the mortgage covers property released from a Sales Project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961, the required minimum investment shall be at least 3 percent of the Commissioner's estimate of cost of acquisition or such larger amount as the Commissioner may determine.

§ 213.510 Mortgage maturity.

(a) *Maturity.* The mortgage shall have a maturity satisfactory to the Commissioner not to exceed 40 years from the date of the beginning of amortization, except where the mortgage covers property released from a sales project, the blanket mortgage of which was insured pursuant to an application received on or after July 5, 1961. In such instances, the maturity shall not exceed 30 years from the beginning of amortization or 35 years from such date if the mortgagor is an owner occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period.

(b) *Amortization periods.* The amortization period shall be either 10, 15, 20, 25, 30, 35, or 40 years (where eligible) by providing for 120, 180, 240, 300, 360, 420, or 480 monthly amortization payments.

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 213.512 Amortization provisions.

The mortgage must contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor sufficient to repay principal and interest in full at maturity.

§ 213.513 Payment of insurance premiums or charges; prepayment premiums.

The mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth (1/12) of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage may provide for a monthly payment by the mortgagor of an amount equal to one-twelfth (1/12) of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect. The mortgage shall provide that upon payment of the mortgage before maturity, the mortgagor shall pay the adjusted premium charge referred to in this part, but shall not provide for the payment of any further charge on account of such prepayment.

§ 213.514 Payments to include other charges.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee in a manner satisfactory to the Commissioner, for the purpose of paying such ground rents, taxes, assessments, and insurance premiums, before the same become delinquent, for the benefit and account of the mortgagor. The mortgage must also make provision for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

(b) Mortgages involving an original principal obligation not in excess of $9,000 may contain a provision requiring the mortgagor to pay to the mortgagee an annual service charge at such rate as may be agreed upon between the mortgagee and the mortgagor, but in no case shall such service charge exceed one-half of one percent per annum. Any such service charge shall be payable in monthly installments on the principal then outstanding. The provisions of this paragraph shall not apply to mortgages endorsed for insurance pursuant to applications received by the Commissioner on or after July 17, 1961.

§ 213.515 Payments, how applied.

All monthly payments to be made by the mortgagor to the mortgagee, as hereinabove provided, shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(a) Premium charges under the contract of insurance, including charges for "open-end" advances;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next such payments, constitute an event of default under the mortgage.

§ 213.516 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 213.517 Payments upon execution of mortgage.

The mortgagor must pay to the mortgagee upon the execution of the mortgage a sum that will be sufficient to pay the ground rents, if any, and the estimated taxes, special assessments, and

fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage, and may be required to pay a further sum equal to the first annual mortgage insurance premium, plus an amount sufficient to pay the mortgage insurance premium from the date of closing the loan to the date of the first monthly payment.

§ 213.518 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, which ever is the greater.

(2) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(b) [Reserved]

(c) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing all items for which any charge, fee or discount was collected by it, from the mortgagor, together with the amount of each such charge, fee or discount. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(d) Nothing in this section will be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

ELIGIBLE MORTGAGORS

§ 213.520 Mortgage lien.

A mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 213.521 Relationship of income to mortgage payments.

A mortgagor must establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 213.522 Credit standing.

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

§ 213.523 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 213.524 Limitation on eligibility.

No person shall be eligible to be the mortgagor of more than one mortgage insured under this subpart at any one time, nor shall he be eligible if he is the mortgagor of a mortgage or mortgages covering four (4) or more single-family dwellings insured under this chapter.

ELIGIBLE PROPERTIES

§ 213.525 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 with a period of not less than 50 years to run from the date the mortgage is executed.

§ 213.526 Dwelling unit located on property.

At the time a mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than one family. Such unit may be connected with other dwellings by a party wall or otherwise.

OPEN-END ADVANCES

§ 213.530 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subpart or insured after the effective date of this part, subject to compliance with the requirements of this section:

(a) The proceeds of any open-end advance must be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant. A commitment extension fee of $10 shall be remitted by the mortgagee with a request for extending an outstanding commitment or for reopening and extending an expired commitment within two months after such expiration.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in this part. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of such advance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate

amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of § 213.509.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee will have the sole responsibility for determining that any mortgage amended by an "open-end" rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

§ 213.550 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.

§ 213.749 Effect of amendments.

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

Subpart D—Contract Rights and Obligations—Individual Properties Released From Project Mortgage

§ 213.751 Incorporation by reference.

(a) *Definitions.* All of the definitions contained in § 213.1 shall apply to this subpart.

(b) *Other provisions.* All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 213 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.440—203.493, inclusive.

(c) *References.* For the purpose of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 213 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

PART 215—RENT SUPPLEMENT PAYMENTS

Sec.
215.1 Definitions.
215.5 Scope of rent supplement assistance.
215.10 Projects eligible for benefits.
215.15 Eligible housing owner.
215.20 Qualified tenant.
215.25 Certificate of eligibility.
215.30 Provisions applicable to cooperative members.
215.35 Term of contract.
215.40 Maximum annual project payments under contract.
215.45 Maximum payments under contract for each tenant.
215.50 Time of payment under contract.
215.55 Recertification of income under contract.
215.60 Hardship cases.
215.65 Tenant occupancy limitations.
215.70 Form of lease.
215.75 Housing owner's obligation under contract to report tenant income increase.
215.80 Change in tenant income status.

AUTHORITY: The provisions of this Part 215 issued under sec. 101(g), 79 Stat. 453; 12 U.S.C. 1701s.

§ 215.1 Definitions.

(a) "Act" means the Housing and Urban Development Act of 1965.

(b) "Secretary" means the Secretary of Housing and Urban Development or an officer of the Department of Housing and Urban Development empowered to exercise any of the functions of the Secretary under section 101 of the Act.

(c) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(d) "Dilapidated housing" means a housing unit that does not provide safe and adequate shelter, and in its present condition endangers the health, safety or well-being of the occupants. Such a housing unit shall have one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. Such defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(e) "Displaced by governmental action" means an individual or family, moved or to be moved from real property occupied as a dwelling unit as a result of activities in connection with a public improvement or development program carried on by an agency of the United States or any State or local governmental body or agency.

(f) "Family" means two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling unit.

(g) "Physically handicapped" means an individual who has a physical impairment which:

(1) Is expected to be of long continued and indefinite duration;

(2) Substantially impedes his ability to live independently; and

(3) Is of such nature that his ability to live independently could be improved by more suitable housing conditions.

(h) "Substandard housing" means a unit which is either dilapidated as defined in paragraph (d) of this section, or does not have one of the following plumbing facilities:

(1) Hot and cold piped water inside the unit.

(2) Usable flush toilet inside the structure for the exclusive use of the occupants of the unit.

(3) Usable bathtub or shower inside the structure for the exclusive use of the occupants of the unit.

§ 215.5 Scope of rent supplement assistance.

The Commissioner may enter into a rent supplement contract with the owner of specific types of multifamily housing projects for payment of a portion of the rent on behalf of qualified tenants. The conditions of eligibility for such a contract and its terms are specified in this part.

§ 215.10 Projects eligible for benefits.

(a) Rent supplement payments shall be available in connection with multifamily projects which involve:

(1) New construction,

(2) Major rehabilitation of existing structures,

(3) The creation of standard units in structures previously containing substandard units,

(4) Existing structures financed by a state or local program providing assistance through loans, loan insurance or tax abatements,

(5) Existing structures which are sold by the Secretary, if rent supplement payments had been made in connection with the structures before acquisition by the Secretary and provided that the

rent supplement assistance shall be limited to the maximum amount set forth in the original rent supplement contract, or

(6) On an experimental basis, existing structures in connection with certain housing projects for the elderly.

(b) The Commissioner may make rent supplement payments with respect to projects in which dwelling units do not contain kitchen facilities.

§ 215.15 Eligible housing owner.

(a) To be eligible to receive rent supplement payments, the owner of the multifamily project shall be a nonprofit, limited distribution, or cooperative mortgagor. The project shall be financed in one of the following ways:

(1) By a mortgage bearing interest at the market rate prescribed in § 221.518 (a) of this title and insured under section 221(d)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 221(d)(3)). Such mortgage shall be insured pursuant to an insurance commitment issued after August 10, 1965.

(2) By a state or local program providing assistance through loans, loan insurance, or tax abatements, if the project is approved by the Commissioner for receiving rent supplement payments.

(b) The Commissioner may, on an experimental basis, enter into a limited number of rent supplement contracts with the following types of housing owners:

(1) A nonprofit, limited distribution, or cooperative mortgagor under a mortgage bearing interest at the below market rate prescribed in § 221.518(b) of this title. Such project must be insured pursuant to a commitment issued after August 10, 1965 for the insurance of a mortgage under section 221(d)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 221(d)(3)).

(2) A private nonprofit mortgagor under a mortgage insured pursuant to section 231(c)(3) of the National Housing Act (or insured under section 233 of such Act pursuant to section 231(c)(3)) which is approved for receiving the benefits provided in this part and finally endorsed for insurance after August 10, 1965.

(3) A private nonprofit corporation, a public body or agency, or a cooperative housing corporation which is a borrower under section 202 of the Housing Act of 1959 and has been approved for receiving the benefits provided in this part.

(4) A nonprofit, limited distribution, or cooperative mortgagor under a mortgage insured pursuant to section 236 of the National Housing Act (or insured under section 233 of such Act pursuant to section 236(j)(1)) which is receiving interest reduction payments pursuant to section 236 of the Act and is approved for receiving the benefits provided in this part.

(c) A housing owner qualifying under the provisions of paragraph (a) or (b) of this section shall only be eligible for rent supplement payments if:

(1) The dwelling unit or project is part of a workable program for community improvements meeting the requirements of section 101(c) of the Housing Act of 1949; or

(2) The dwelling unit or project receives local official approval for participation in the Federal rent supplement program.

§ 215.20 Qualified tenant.

(a) The benefits of the rent supplement payments are available only to an individual or a family renting a dwelling unit in a project owned by an eligible housing owner or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family shall meet the following requirements:

(1) Have an annual income below the maximum amount established by the Secretary, which amount shall not be higher than can be established in the area where the property is located for occupancy in a low-rent public housing project assisted under the United States Housing Act of 1937. In computing a tenant's income for the purpose of this section, $300 shall be deducted for each minor person who is a member of the immediate family of the tenant and residing with the tenant and any earnings of such minor shall not be included in computing the tenant's income.

(2) In a case involving an elderly individual or a family whose head or spouse is elderly, have assets not exceeding $5,000.

(3) In a case involving other than the elderly, have assets not exceeding $2,000.

(4) Be one of the following:

(i) An individual or family displaced by governmental action.

(ii) An individual who is 62 years of age or over, or physically handicapped.

(iii) A head of a family who is or whose spouse is, 62 years of age or over, or who is physically handicapped.

(iv) An occupant of substandard housing.

(v) An occupant or former occupant of a dwelling which is (or was) situated in an area determined by the Small Business Administration subsequent to April 1, 1965, to have been affected by a natural disaster and which has been extensively damaged or destroyed as the result of such disaster.

(vi) A family whose head, or spouse, is a member of the Armed Forces of the United States who is serving on active duty.

(b) For the purposes of this section, income shall mean the total gross income, before taxes and other deductions, received by all members of the tenant's household. In determining gross income, there shall be included all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments, and such other income items as the Secretary considers appropriate.

(c) Whenever the Commissioner determines that a project, because of its location or other considerations, could ordinarily be expected to substantially serve the family needs of military personnel who are serving on active duty and who meet the income requirements established by the Commissioner, such preference for occupancy shall be afforded to the family of such military personnel as the Commissioner determines is appropriate.

§ 215.25 Certificate of eligibility.

(a) Upon request of a housing owner, the Commissioner will review for eligibility the application by a prospective tenant for rent supplement payments. If the application meets the requirements of § 215.20, the Commissioner shall issue a certificate of eligibility. The certificate shall state the amount of rent supplement to be paid monthly by the Commissioner to the housing owner on behalf of the qualified tenant. The payment shown in the certificate shall not, regardless of the tenant's income, exceed 70 percent of the approved rent for the unit. No certificate of eligibility shall be issued where the amount of rent supplement payment would be less than 10 percent of such approved rent.

(b) The Commissioner may approve a qualified tenant as a lessee under an option to purchase a dwelling at a stipulated price, if he determines that the tenant will be able to finance such purchase on the basis of the probability of future increases in the tenant's income.

§ 215.30 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rent supplement payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rent supplement payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Commissioner.

(b) The term "tenant" as used in this section shall mean a member of a cooperative, and the term "rent" shall mean the charges under the occupancy agreement between the members of the cooperative.

§ 215.35 Term of contract.

The rent supplement contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

§ 215.40 Maximum annual project payments under contract.

The rent supplement contract shall state the maximum dollar amount of the rent supplement payments for any 1 year based upon the Commissioner's estimate of probable effective demand and distribution of tenant income, including a 10-percent contingency allowance. At the end of such period of time as the Commissioner may prescribe for the rental of

the dwelling units, appropriate adjustment shall be made in the maximum rental payments, including a 10-percent contingency allowance, to reflect the actual requirements of the tenants. Payments shall not be made with respect to more than 20 percent of the number of dwelling units in any project which is assisted under:

(a) Section 202 of the Housing Act of 1959, if the loan agreement under that section was entered into on or before August 10, 1965; or

(b) Section 231(c)(3) of the National Housing Act, if the mortgage was finally endorsed for insurance under that section after August 10, 1965, pursuant to a commitment issued on or before such date.

(c) Section 236 of the National Housing Act, except that the Commissioner may increase to 40 percent the limitation on the number of dwelling units in any section 236 project eligible for rent supplement payments, where he determines that such increase is necessary to provide additional housing for lower income families.

§ 215.45 Maximum payments under contract for each tenant.

(a) The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be that amount by which the rent approved by the Commissioner for the unit exceeds one-fourth of the tenant's income, or exceeds any welfare allowance for housing if such allowance is larger than one-fourth of the tenant's income.

(b) In computing tenant's income for the purpose of this section, the following deductions shall be taken into consideration:

(1) $300 shall be deducted for each minor person who is a member of the immediate family of the tenant and residing with the tenant and any earnings of such minor shall not be included in computing the tenant's income.

(2) The Commissioner may allow special deductions to take into account expenses incurred as a result as a result of physical disability or continuing illness, the cost of necessary child care while a wage earner of the household is at work and such other deductions as the Secretary considers appropriate.

§ 215.50 Time of payment under contract.

The rent supplement contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility.

§ 215.55 Recertification of income under contract.

The rent supplement contract shall provide, except with respect to tenants who are 62 years of age or older, that a recertification of income shall be obtained by the housing owner each year from the date the original certificate of eligibility was issued. Provision shall be included for adjusting payments to reflect income changes shown by the recertification.

§ 215.60 Hardship cases.

Where a tenant's income has decreased due to illness, loss of job, or other hardship beyond his control, the Commissioner may grant a temporary increase in rent supplement payments.

§ 215.65 Tenant occupancy limitations.

Qualified tenants shall not be permitted to occupy units larger than the Commissioner determines necessary for their needs.

§ 215.70 Form of lease.

(a) *Lease form.* Qualified tenants shall be required to execute a lease in a form approved by the Commissioner.

(b) *Special lease provisions.* The lease shall contain the following special provisions:

(1) A provision obligating the tenant to report immediately to the housing owner any increase in income which results in a monthly income of four or more times the full monthly rental for the housing unit.

(2) A provision obligating the tenant to reimburse the Commissioner for any rent supplement payments made by the Commissioner during a period when the tenant's income had increased to a point where rent supplement payments should have been terminated but were not terminated because of the tenant's failure to report the increase to the housing owner.

§ 215.75 Housing owner's obligation under contract to report tenant income increase.

The rent supplement contract shall contain a provision obligating the housing owner to immediately notify the Commissioner upon receiving a report from a tenant of an increase in the tenant's income resulting in a monthly income of four or more times the full monthly rental for the housing unit. The contract shall also obligate the housing owner, upon failing to notify the Commissioner when a report of such increase in income is received from a tenant, to reimburse the Commissioner for any rent supplement payments made during the period the tenant is receiving the increased income.

§ 215.80 Change in tenant income status.

Appropriate adjustments will be made in rent supplement payments to reflect income changes shown by the annual tenant income recertification. Rent supplement payments will be discontinued when it is determined by the Commissioner that 25 percent of the tenant's income is sufficient to pay the full amount of the rent for the unit occupied by the tenant. Where a tenant is no longer entitled to rent supplement payments, he may continue to occupy the unit. The rent charged for the unit shall not exceed the fair market rental as determined by the Commissioner.

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

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AUTHORITY: The provisions of this Part 220 issued under sec. 211, 52 Stat. 23, as amended, sec. 220, 68 Stat. 596, as amended; 12 U.S.C. 1715b, 1715k.

Subpart A—Eligibility Requirements—Homes

HOME MORTGAGE INSURANCE

§ 220.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply to mortgages covering one- to eleven-family dwellings under section 220 of the National Housing Act, except the following provisions:

Sec.
203.12 Application and commitment extension fees.
203.15 Certification of appraisal amount.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.27 Maximum charges, fees and discounts.
203.28 Economic soundness of project.
203.40 Location of property.
203.42 Rental properties.
203.50 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 220 of the Act.

§ 220.2 Application and commitment extension fees.

All of the provisions of § 203.12 concerning application and commitment extension fees apply to mortgages insured under this part, except the provision in § 203.12(a)(1)(v) for an application fee of $15 where the mortgagee establishes that the Veterans Administration has issued a Certificate of Reasonable Value which has not expired.

§ 220.5 Location of property.

The mortgaged property must be located in

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or prior approval granted (pursuant to Title I of the Housing Act of 1949, as amended) before the effective date of the Housing Act of 1954, or

(b) An urban renewal area in a community which has a workable program to eliminate and prevent the spread of slums and urban blight and respecting which the Secretary of Housing and Urban Development has made the findings prescribed in title I of the Housing Act of 1949, as amended, or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster, or

(d) An area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949.

§ 220.10 Certificate by Secretary to Commissioner.

No mortgage may be insured until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Secretary of Housing and Urban Development and the Secretary has certified to the Commissioner that:

(a) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(b) There exists the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(c) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exists the necessary authority and financial capacity to insure completion of such urban renewal plan.

§ 220.15 Standards and conditions of acceptability.

The mortgaged property shall meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These shall include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.20 Dwelling units on property.

At the time the mortgage is insured, there shall be located on the mortgaged property a dwelling designed principally for residential use of not more than 11 families. Such dwellings may be connected with other dwellings by a party wall or otherwise. Any such dwelling shall be constructed or rehabilitated pursuant to an urban renewal plan approved by the Secretary as provided in section 220(d)(1)(A) of the National Housing Act, as amended.

§ 220.25 Maximum mortgage amounts—dollar limitation.

Depending upon the design of the structure, a mortgage shall not exceed the lesser of the following:

(a) $33,000 for a one-family residence.
(b) $35,750 for a two-family residence.
(c) $35,750 for a three-family residence.
(d) $41,250 for a four-family residence.
(e) $41,250 plus not to exceed $7,700 for each additional family unit in excess of four.

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the property shall not exceed the following:

(1) *New construction—prior approval.* If the mortgage covers a dwelling which is approved for mortgage insurance prior to the beginning of construction, the sum of the following percentages of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

(ii) 90 percent of such estimate in excess of $15,000 but not in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the amount of such estimate in excess of $25,000.

(2) *New construction—no prior approval.* If the mortgage covers a new dwelling under construction which is approved for mortgage insurance after the beginning of construction, the sum of the following percentages of the Commissioner's estimate of the replacement cost of the property as of the date the mortgage is accepted for insurance:

(i) 90 percent of the first $25,000 of such estimate.

(ii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the amount of such estimate in excess of $25,000.

(3) *Existing construction—prior approval.* If the mortgage covers an existing dwelling approved for mortgage insurance prior to the beginning of construction or the construction of which has been completed for more than 1 year, the sum of the Commissioner's estimate of the cost of repair or rehabilitation added to the Commissioner's estimate of the value of the property before rehabilitation in the following percentages:

(i) 97 percent of the first $15,000 of the sum of such estimates (100 percent of $15,000 of the sum of such estimates or an amount derived by adding to the sum of such estimates not in excess of $15,000 the items of prepaid expense approved by the Commissioner and deducting $200, whichever appraisal amount or total amount is the lesser, in the case of a mortgagor qualifying as a veteran).

(ii) 90 percent of the sum of such estimates in excess of $15,000, but not in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the sum of such estimates in excess of $25,000.

(4) *Existing construction—no prior approval.* If the mortgage covers an existing dwelling which was not approved for mortgage insurance prior to the beginning of construction and the construction of which has been completed less than 1 year, the sum of the Commissioner's estimate of the cost of repair or rehabilitation added to the Commissioner's estimate of the value of the property before rehabilitation in the following percentages:

(i) 90 percent of the first $25,000 of the sum of such estimates.

(ii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of the sum of such estimates in excess of $25,000.

(5) *Refinancing.* In a case under subparagraph (3) or (4) of this paragraph involving the refinancing of an existing indebtedness, the sum of the following:

(i) The estimated cost of repair and rehabilitation.

(ii) The amount (as determined by the Commissioner) required to refinance the existing indebtedness secured by the property.

(iii) Any existing indebtedness (as determined by the Commissioner) incurred in connection with improving, repairing, or rehabilitating the property.

(b) *Veteran qualifications.* The special veteran terms provided in paragraph (a) of this section shall only be applicable to a mortgage covering a single family dwelling executed by a mortgagor who submits to the Commissioner one of the following certifications:

(1) A Certificate of Veteran Status from the Veterans Administration establishing that he has served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States and the Air National Guard of the United States) of the United States and was discharged or released therefrom under conditions other than dishonorable.

(2) A certificate issued by the Secretary of Defense establishing that the mortgagor performed extra hazardous service while serving in the armed forces for a period of less than 90 days.

(c) *Nonoccupant mortgagors.* (1) A mortgage, executed by a mortgagor who is not the occupant of the property and who certifies to the Commissioner that he intends to hold the property for rental purposes, shall not exceed 93 percent of any amount available to a nonveteran under subparagraphs (1) through (4) of paragraph (a) of this section, or 100 percent of an amount computed under subparagraph (5) of paragraph (a) of this section.

(2) A mortgage, executed by a mortgagor who is not the occupant of the property and who certifies to the Commissioner that he intends to hold the property for the purpose of the sale, shall not exceed:

(i) 85 percent of any amount available to a nonveteran under subparagraphs (1) through (4) of paragraph (a) of this section, or 100 percent of any amount computed under subparagraph (5) of paragraph (a) of this section.

(ii) 100 percent of any amount available to a nonveteran under subparagraphs (1) through (4) of paragraph (a) of this section, without taking into consideration the refinancing limitations in subparagraph (5) of paragraph (a) of this section, if the mortgage covers a one- or two-family residence and the Commissioner is furnished with certificates indicating that:

(*a*) 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 prior to the 18th amortization payment of the mortgage, except with the prior written approval of the Commissioner.

(*b*) There has been deposited in an escrow, trust, or special account not less than 15 percent of the original principal amount of the mortgage proceeds or such additional amount as may be necessary to reduce the remaining principal to an amount not exceeding the sum of the estimated cost of repairs and rehabilitation, and the amount required to refinance any existing indebtedness determined by the Commissioner to have been incurred in connection with improving, repairing or rehabilitating the property.

(c) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(*d*) 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, shall be deducted from the amount of the cash settlement to which the mortgagee would be otherwise entitled if a claim for insurance benefits is filed.

§ 220.35 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition, or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 220.40 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 of said property is a part of, or adjacent or contiguous to a project, subdivision or group of similar rental properties which involve twelve or more dwelling units if the mortgagor has any financial interest in said properties.

(b) No two-, three-, or four-family dwelling nor single-family dwelling, if it is a 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 of this chapter, so long as such dwelling is subject to any insured mortgage.

(c) The provisions of paragraph (a) of this section shall not apply where the Commissioner determines that the application of such provisions would substantially interfere with the repair and rehabilitation of a subdivision or group of existing properties.

§ 220.45 Certificates of appraisal and replacement amounts.

All of the provisions of § 203.15 of this chapter apply to mortgages insured under this subpart except that with respect to mortgages meeting the requirements of § 220.21(a)(1), the application for insurance must be accompanied by an agreement satisfactory to the Commissioner executed by the seller, builder

or such other person as required by the Commissioner whereby such person agrees that prior to any sale of the dwelling such person will deliver to the purchaser of the property a written statement acceptable to the Commissioner setting forth the amount of the Commissioner's estimate of the replacement cost of the property.

§ 220.50 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) The application fees provided for in this part.

(2) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed:

(i) $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater; or

(ii) $50 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

(iii) If the mortgage involves repair or rehabilitation, and the mortgagee meets the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, the charge prescribed in subdivision (ii) of this subparagraph may be collected in connection with that portion of the mortgage applied to such repair or rehabilitation. The charge with respect to any part of the mortgage not applied to repair or rehabilitation, or any part of the mortgage so applied which does not meet the conditions of subdivision (ii) of this subparagraph relating to disbursements and inspections, shall be limited to that provided in subdivision (i) of this subparagraph.

(3) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(ii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(4) Reasonable and customary charges in the nature of discounts if the mortgagor is:

(i) A builder constructing houses for sale who executes the mortgage in his own name;

(ii) Constucting a dwelling for his own occupancy; or

(iii) Refinancing an existing indebtedness secured by the property owned by the mortgagor.

(iv) Purchasing the property from a governmental agency or municipal corporation which is precluded by statute from paying the discount.

INSURED HOME IMPROVEMENT LOANS

§ 220.100 Incorporation by reference.

All of the provisions in §§ 203.50 et seq. covering insured home improvement loans under section 203(k) of the Act shall apply to insured home improvement loans on one- to eleven-family dwellings under section 220(h) of the Act except the following provisions:

Sec.
203.73 Maximum loan amounts.

§ 220.102 Maximum loan amount.

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

(1) The Commissioner's estimate of the cost of improvements, $40,000, or $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.25 and 220.30 for mortgages on properties other than new construction; or

(3) Where the proceeds are to be used for the purposes indicated in § 203.-82(a)(2) of this chapter, an amount which when added to the aggregate principal balance of any outstanding insured home improvement loans which were obtained for the purposes indicated in § 203.82(a)(2) of this chapter, creates an aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds the cost levels so require, he may increase by not to exceed 45 percent the $12,000 per family unit limitation set forth in paragraphs (a)(1) and (3) of this section.

(b) In any geographical area where the Commissioner finds cost levels so require, he may increase by not to exceed 45 percent the $10,000 per family unit limitation set forth in paragraph (a)(1) and (3) of this section.

§ 220.103 Type and location of property.

The property to be improved shall:

(a) Constitute real property located within the United States, its territories, or possessions;

(b) Contain an existing structure or structures;

(c) Be located in one of the urban renewal areas specified in § 220.5.

§ 220.125 Cost certification requirements.

A loan for the improvement of a structure which is used, or upon completion of the improvements will be used, as a dwelling for five to eleven families shall be subject to the provisions of paragraphs (a) through (c) of this section as follows:

(a) The lender shall submit with the application for commitment an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute, upon completion of the improvements, a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $12,000, or adjusted to the lowest $100 multiple where the amount exceeds $12,000.

(b) No loan shall be insured unless in accordance with the agreement between the borrower and the lender.

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor

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

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

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

Subpart B—Contract Rights and Obligations—Homes

§ 220.251 Incorporation by reference.

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

Sec.
203.340 Conditions of special forbearance relief.
203.341 Reimbursement for uncollected interest.
203.342 Recasting of mortgage.
203.350 Assignment of defaulted mortgage—in general.
203.351 Application for insurance benefits and fiscal data.
203.352 Title evidence upon assignment.
203.353 Certification by mortgagee.
203.400 Method of payment.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 220 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 220.252 Forbearance of foreclosure and assignment of mortgage.

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

§ 220.275 Method of paying insurance benefits.

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

INSURED HOME IMPROVEMENT LOANS

§ 220.350 Incorporation by reference.

(a) All of the provisions of §§ 203.440 et seq. of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to home improvement loans on one- to four-family dwellings under section 220(h) of the Act.

Subpart C—Eligibility Requirements—Projects

PROJECT MORTGAGE INSURANCE

§ 220.501 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter, concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.2 Issuance of commitment.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.17 Classification.
207.19 Required supervision of private mortgagors.
207.24 Development of property.
207.27 Certificates of actual cost.
207.31 Eligibility of miscellaneous-type mortgages.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be deemed to refer to section 220 of the National Housing Act.

§ 220.502 Location of property.

The mortgaged property must be located in:

(a) The area of an existing slum clearance and urban redevelopment project covered by a Federal-aid contract executed or a prior approval granted (pursuant to Title I of the Housing Act of 1949, as amended), before the effective date of the Housing Act of 1954, or

(b) An urban renewal area in a community which has a workable program to eliminate and prevent the spread of slums and urban blight, and respecting which the Secretary of Housing and Urban Development has made the findings prescribed in title I of the Housing Act of 1949, as amended, or

(c) The area of an urban renewal project assisted under section 111 of the Housing Act of 1949, as amended, providing for redevelopment or rehabilitation of urban areas made necessary as the result of a disaster, or

(d) An area in which a program of concentrated code enforcement activities is being carried out pursuant to section 117 of the Housing Act of 1949.

§ 220.503 Certificate by Secretary to Commissioner.

No mortgage shall be insured until a redevelopment or urban renewal plan has been approved for the area by the governing body of the locality involved and by the Secretary of Housing and Urban Development and the Secretary has certified to the Commissioner that:

(a) The redevelopment plan or the urban renewal plan conforms to a general plan for the locality as a whole, and

(b) There exists the necessary authority and financial capacity to assure the completion of such redevelopment or urban renewal plan, or

(c) There exists an urban renewal plan as required for projects assisted under section 111 of the Housing Act of 1949, as amended, which plan conforms to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements, and there exists the necessary authority and financial capacity to insure completion of such urban renewal plan.

§ 220.504 Standards and conditions of acceptability.

The mortgaged property must meet such standards and conditions as the Commissioner shall prescribe to establish the acceptability of such property for mortgage insurance. These will include standards and conditions designed to restore the quality of the area to a condition which would justify mortgage insurance.

§ 220.505 Eligible mortgagors.

In order to be eligible under this subpart, the mortgagor shall be one of the following types:

(a) *Private mortgagors.* Any mortgagor approved by the Commissioner which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

(b) *Public mortgagors.* A Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or a limited dividend or redevelopment or housing corporation or other legal entity restricted by or under Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

§ 220.506 Development of property.

(a) *Obligation of mortgagor to construct project.* At the time the mortgage is insured, the mortgagor shall be obligated to construct and complete new housing accommodations on the mortgaged property or to rehabilitate existing housing accommodations thereon. The Commissioner may insure a mortgage on a completed project constructed pursuant to a commitment to insure upon completion.

(b) *Minimum number of units.* The project shall consist of not less than two rental dwelling units on one site and may be detached, semidetached, or row houses, or a multifamily structure. The site may consist of two or more noncontiguous parcels of land whenever the Commissioner shall have determined that the parcels are (1) so situated as to comprise a readily marketable real estate entity, and (2) within an area small enough to allow convenient and efficient management.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(d) *Property facilities.* The project shall be predominantly residential. It may include such nondwelling facilities

as the Commissioner determines will be desirable and consistent with the urban renewal plan and contribute to the economic feasibility of the project. In approving such facility, the Commissioner shall give due consideration to the possible effect of the project on other business enterprises in the community.

§ 220.507 Maximum mortgage amounts.

(a) *Dollar limitation—in general.* A mortgage may involve a principal obligation not in excess of the lesser of the following:

(1) $50 million.

(2) [Reserved]

(3) (i) For such part of the property or project attributable to dwelling use (excluding exterior land improvements as defined by the Commissioner), an amount per family unit, depending on the number of bedrooms, which may be:

(*a*) $9,900 without a bedroom.

(*b*) $13,750 with one bedroom.

(*c*) $16,500 with two bedrooms.

(*d*) $20,350 with three bedrooms.

(*e*) $23,100 with four or more bedrooms.

(ii) Where the project involves the rehabilitation of not more than five family units, the mortgage amounts per family unit designated in subdivision (i) of this subparagraph may be increased by 25 percent as follows:

(*a*) $20,625 for a two-bedroom unit.

(*b*) $25,425 for a three-bedroom unit.

(*c*) $28,875 for a four or more bedroom unit.

(b) *Increased dollar limitation—elevator type structures.* In order to compensate for higher costs incident to the construction of elevator type structures, the Commissioner may increase the dollar amounts per family unit, in paragraph (a)(3) of this section, as follows:

(1) With respect to any elevator type structure:

(i) $11,550 without a bedroom.

(ii) $16,500 with one bedroom.

(iii) $19,800 with two bedrooms.

(iv) $24,750 with three bedrooms.

(v) $28,050 with four or more bedrooms.

(2) With respect to an elevator type project involving the rehabilitation of not more than five family units, the dollar amounts per family unit, in subparagraph (1) of this paragraph, may be increased by 25 percent as follows:

(i) $24,750 with two bedrooms.

(ii) $30,925 with three bedrooms.

(iii) $35,050 with four or more bedrooms.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in paragraphs (a)(3) and (b) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of paragraphs (a) to (c) of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (i) The Commissioner's estimate of the cost of the repair or rehabilitation; and (ii) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (i) The Commissioner's estimate of the cost of the repair or rehabilitation and (ii) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

The dollar limitation set forth in this section is in addition to the loan-to-value limitation as set forth in § 220.508.

(e) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 of this chapter on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 220.508 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitation set forth in § 220.507, the mortgage shall be in an amount not to exceed:

(a) *Approved new construction.* 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed, if the project is approved for mortgage insurance prior to the beginning of construction. The replacement cost of the property or project may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner; and shall include an allowance for builder's and sponsor's profit and risk to be determined by totaling the foregoing items, with the exception of the land, and apply the percentage or percentages specified in § 220.513.

(b) *Nonapproved new construction.* 90 percent of the Commissioner's estimate of the value of the property or project when the proposed improvements are completed, if the project is under construction and was not approved for mortgage insurance prior to the beginning of construction.

(c) *Repair and rehabilitation.* 90 percent of the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property or project before repair and rehabilitation.

(d) *Limitations on refinancing.* The estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance existing indebtedness secured by the property or project.

(e) *Limitations on purchase from local public agency.* If the mortgage involves the financing of the purchase of property which has been rehabilitated by a local public agency with federal assistance pursuant to section 110(c)(3) of the Housing Act of 1949, the mortgage shall not exceed the lesser of the following amounts:

(1) 90 percent of the Commissioner's estimate of the appraised value of the property, as of the date the mortgage is accepted for insurance.

(2) 90 percent of the actual cost of acquisition, as approved by the Commissioner.

§ 220.509 Maximum mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of

the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 220.511 Supervision of mortgagors.

All of the provisions of § 207.19 of this chapter apply, except that in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for two to eleven families, § 207.19(d) relating to labor standards and prevailing wage requirements shall not apply.

§ 220.512 Certificates of actual cost.

(a) *Mortgagor's certificate*—(1) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(2) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(i) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(ii) The architect's fee.

(iii) The offsite public utilities and streets not included in subdivision (i) of this subparagraph.

(iv) The organization and legal expenses.

(v) The other items of expense approved by the Commissioner.

(3) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders or partners. Any such payments shall be deducted from the costs determined under subparagraph (2) of this paragraph.

(b) *Records.* The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(c) *Certificate of public accountant.* The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 220.513 Builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include an allowance for builder's and sponsor's profit and risk, the amount of which shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided in § 220.512(a)(2)(i). This allowance shall be 10 percent of the actual cost computed in accordance with § 220.512(a) excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 220.512(a) excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

§ 220.525 Mortgages of $200,000 or less involving rehabilitation.

In the case of rehabilitation of an existing project and when the principal amount of the loan is $200,000 or less, all of the provisions of §§ 220.501 through 220.513 relating to project mortgage insurance shall apply except as modified below:

(a) *Classification of mortgagors.* In order to be eligible as a mortgagor the applicant shall qualify as one of the following:

(1) *Private mortgagors.* Any mortgagor approved by the Commissioner.

(2) *Public mortgagors.* A Federal or state instrumentality, a municipal corporate instrumentality of one or more states, or a limited dividend or redevelopment or housing corporation formed under federal or state laws or regulations.

(b) *General supervision of mortgagors.* The provisions of § 207.18(a) and (c) of this chapter shall not apply.

(c) *Required supervision of private mortgagors.* (1) The provisions of § 207.19, paragraph (a) *Capital structure;* paragraph (b) *Rate of return;* paragraph (c) *Requirements incident to insurance of advances,* subparagraph (1); paragraph (e) *Rents and charges;* paragraph (f) *Methods of operation,* subparagraphs (3) and (5); and paragraph (h) *Advance amortization* of this chapter shall not apply.

(2) In a project involving the insurance of advances, the mortgagor shall deposit with the mortgagee or, in a depository satisfactory to the mortgagee and under control of the mortgagee an amount, satisfactory to the Commissioner, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to the accruals for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(3) The mortgagor shall execute and deliver to the Commissioner a certificate or agreement that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner. Commencing on the date the certificate or agreement is executed, and so long as the mortgage is insured or held by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner; and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audits as they may desire to make. The mortgagor shall file with the Commissioner and the mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(i) Upon demand, annual financial reports; and

(ii) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage.

INSURED PROJECT IMPROVEMENT LOANS

§ 220.550 Definitions.

As used in §§ 220.550 *et seq.*, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(e) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(f) "Loan" means an advance of funds or credit evidenced by a note, which is secured by a security instrument.

(g) "Outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(h) "Lender" means an approved financial institution eligible for insurance under section 220(h) of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

§ 220.552 Form of application.

An application for the issuance of either a conditional or firm commitment for insurance of a loan on a project shall be submitted by an eligible lender and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless accompanied by the exhibits called for by the form.

§ 220.553 Application fee.

(a) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the loan applied for, shall also be submitted with the application for a firm commitment.

§ 220.554 Commitment and commitment fee.

(a) *Conditions of commitment*—(1) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

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

(b) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(c) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(3) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such addiitonal period, estimated by the Commissioner, as will allow for completion of construction.

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 220.555 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

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

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

§ 220.560 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the loan, either by amendment or by substitution of a loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

§ 220.561 Refund of fees.

If the amount of the commitment issued or increase in loan granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fees or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that the improvements or financing of the project have been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine.

§ 220.562 Charges by lender.

The lender may collect from the borrower the amount of the fees provided for in §§ 220.550 et seq. The lender may also collect from the borrower an initial service charge in an amount not to exceed 2 percent of the original principal amount of the loan to reimburse the lender for the cost of closing the transaction. Any additional charges shall be subject to prior approval of the Commissioner.

§ 220.563 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 or 203.6 of this chapter shall be eligible for insurance of project improvement loans under § 220.550 et seq.

§ 220.564 Note and security form.

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

§ 220.565 Disbursement of proceeds.

Prior to final endorsement, the entire principal amount of the note shall have been disbursed to the borrower or to his creditors for his account and with his consent.

§ 220.570 Loan multiples.

The loan shall involve a principal obligation in multiples of $50.

§ 220.571 Method of loan payment.

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

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

§ 220.572 Date of first payment to principal.

The Commissioner shall estimate the time necessary to complete the improvements to the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the improvements and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 220.573 Maturity of loan.

The loan shall have a maturity satisfactory to the Commissioner not less than 5 or more than 20 years from the date of the beginning of amortization or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

§ 220.574 Loan amortization period.

The loan shall have an amortization period of either 5, 10, 15 or 20 years by providing for either 60, 120, 180 or 240 monthly amortization payments.

§ 220.575 Maximum loan amounts.

(a) The loan shall not exceed:

(1) The Commissioner's estimate of the cost of the improvements or $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.506, 220.507, and 220.508 for mortgages on properties of the same type other than new construction; or

(3) Where the proceeds are to be used for the purposes indicated in § 220.601 (a) (2), an amount which when added to the aggregate principal balance of any outstanding insured project improvement loans which were obtained for the purposes indicated in § 220.601(a) (2) creates the aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds cost levels so require, he may increase by not to exceed 45 percent the per family unit limitations set forth in paragraphs (a) (1) and (3) of this section.

§ 220.576 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the loan may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the loan outstanding on the due date of each installment.

§ 220.577 Eligibility of title.

When the principal amount of the loan exceeds $40,000, in order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 220.580 Title evidence.

When the principal amount of the loan exceeds $40,000, the lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section or if the lender is unable to furnish such policy for reasons satisfactory to the Commissioner, the lender without expense to the Commissioner, shall furnish such evidence of title as provided in paragraph (b) of this section as the Commissioner may require. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will become an owner's policy running to the lender or the Secretary, as the case may be.

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

§ 220.581 Security instrument to cover entire property.

The security instrument shall cover the entire property included in the housing project.

§ 220.582 Covenant against liens.

The security instrument shall contain a covenant against the creation by the borrower of liens against the property superior to the lien of such instrument.

§ 220.583 Accumulation of next premium.

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

§ 220.584 Accumulation of other items.

When the principal amount of the loan exceeds $200,000, the Commissioner may require that the security instrument provide for such equal monthly payments by the borrower to the lender as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the date on which the items became delinquent. The security instrument shall further provide that such payments shall be held by the lender for the purpose of paying such ground rents, taxes, water rates, assessments, and insurance premiums before the same become delinquent. The security instrument shall also make provision for an adjustment in case the estimated amount of such taxes, water rates, assessments and insurance premiums shall prove more, or less than the actual amount thereof so paid by the borrower.

§ 220.585 Application of payments.

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

(1) Premium charges under the contract of insurance;

(2) Interest on the loan;

(3). Amortization of the principal of the loan;

(b) When the principal amount of the loan exceeds $200,000 and the security instrument provides for the accumulation of the items enumerated in § 220.584 the lender shall apply the payments received from the borrower in the following order:

(1) Premium charges under the contract of insurance;

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

(3) Interest on the loan;

(4) Amortization of the principal of the loan;

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

§ 220.590 Prepayment privilege and prepayment charge.

(a) *Prepayment privilege.* (1) The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days' advance written notice.

(2) If the loan exceeds $200,000 it may contain a provision for a charge in the event of prepayment of principal

as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge.

(b) *Prepayment under cost certification.* Any reduction in the original principal amount of the loan resulting from the certification of the cost requirements of §§ 220.620–220.625, and 220.630 shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

§ 220.592 Late charge.

The loan may provide for the collection by the lender of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 220.593 Certificate regarding use for transient or hotel purposes.

The borrower shall certify under oath, that so long as the loan is insured by the Commissioner, the borrower will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such loan for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean:

(a) Rental for any period less than 30 days; or

(b) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens and bellboy service.

§ 220.594 Zoning, deed or building restrictions.

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

§ 220.595 Certificate of nondiscrimination by borrower.

The borrower shall certify to the Commissioner as to each of the following points:

(a) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the security instrument to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 220.600 Covenant relating to use of property.

When the principal amount of the loan exceeds $40,000, the security instrument shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended, at the date the loan was executed.

§ 220.601 Use of proceeds.

(a) The proceeds of the loan shall be used only for the following purposes:

(1) To finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling, or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(2) To pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other public improvements, adjacent to or in the vicinity of the borrower's property, which is assessed against the borrower or for which he is otherwise legally liable as the property owner.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a).

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used, upon completion of the improvements, primarily for residential purposes by five or more families; and

(2) Be located in one of the urban renewal areas specified in § 220.502; and

(3) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which were not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

§ 220.602 Nature of borrower's ownership.

To be eligible for insurance, the property to be improved shall be held by the borrower in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease with an expiration date in excess of 10 years later than the maturity date of the loan.

§ 220.603 Supervision by Commissioner.

The Commissioner may regulate and restrict the borrower as long as the Commissioner is the insurer, holder or reinsurer of the loan. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 220.610 Commitments to insure.

(a) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the loan will be insured.

(b) *Insurance of advances.* When the principal amount of the loan exceeds $40,000, the commitment may provide for the insurance of advances of loan money made during the construction of the improvements.

(c) *Insurance upon completion.* The commitment may provide for the insurance of the loan after completion of the improvements.

(d) *Renewal of commitment.* The commitment may be renewed or extended in such manner as the Commissioner may specify.

§ 220.611 Building loan agreement.

When the principal amount of the loan exceeds $40,000, and there is to be insurance of advances during construction of the improvements, the borrower and lender shall, prior to the initial endorsement of the loan for insurance, execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 220.612 Assurance of completion.

(a) When the principal amount of the loan exceeds $40,000, assurance of completion satisfactory to the Commissioner shall be furnished in an amount of at least 10 percent of the cost of the construction of the improvements to the project as estimated by the Commissioner and shall be in one of the following forms:

(1) A bond of a surety company satisfactory to the Commissioner on the standard form prescribed by the Commissioner with the borrower and lender as joint obligees.

(2) An escrow deposit with the lender or with a depository satisfactory to the lender and the Commissioner of cash or securities of, or fully guaranteed as to principal and interest by, the United States of America, under a completion assurance agreement prescribed by the Commissioner.

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

§ 220.614 Prevailing wage requirements.

When the property to be improved consists of a dwelling or dwellings for twelve (12) or more families, the following requirements shall be met:

(a) *Labor standards.* Any contract or subcontract executed for the performance of constructing the improvements to the project shall comply with all applicable labor standards and provisions of the Regulations of the Secretary of Labor (29 CFR 5.1–5.12).

(b) *Ineligible contractors.* No contract shall be entered into with a general contractor or any subcontractor for the construction of improvements, if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General pursuant to the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

(c) *Ineligible advances.* Unless approved by the Commissioner, no advance under the loan shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General pursuant to the provisions of the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

(d) *Wage certificate.* No advance under the loan shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in constructing the improvements to the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 220.615 Discrimination prohibited.

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

§ 220.616 Cost certification requirements; loans $200,000 or less.

When the principal amount of the loan is $200,000 or less the following provisions shall apply:

(a) *Certification agreement.* The lender shall submit with the application for commitment an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute, upon completion of the improvements, a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $10,000, or adjusted to the lowest $100 multiple where the amount exceeds $10,000.

(b) *Certificate and adjustment.* No loan shall be insured unless in accordance with the agreement between the borrower and the lender.

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) *Cost computation.* The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

§ 220.618 Cost certification requirements; loans over $200,000.

When the principal amount of the loan is over $200,000 the following provisions shall apply:

(a) *Certification of cost requirements.* Prior to initial endorsement of the loan for insurance, the borrower, the lender and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of loan proceeds over the actual cost of the improvements to the project. Under this agreement the borrower shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a construction contract the terms of which shall depend on whether or not there exists an identity of interest between the borrower and the builder;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of loan proceeds over the actual cost to the borrower of the improvements in reduction of the outstanding balance of the principal of the loan.

(b) *Form of contract.* The form of contract between the borrower and the builder shall be in accordance with the following:

(1) *Lump sum contract.* If the Commissioner determines that neither the borrower nor any of the officers, directors or stockholders of the borrower have any interest in the builder or contractor, there may be used a lump sum contract providing for payment of a specified amount.

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

(c) *Certificates as to subcontracts.* If the Commissioner determines that the borrower, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the borrower shall certify in form prescribed by the Commissioner, prior to final endorsement of the loan for insurance, that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type of labor and materials.

(d) *Certificate of actual cost.* The borrower's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the borrower of:

(1) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the borrower corporation, or to any of its officers, directors or stockholders;

(2) Architect's fees;

(3) Off-site public utilities and streets not included in the general contract;

(4) Organizational and legal work; and

(5) Other items of expense approved by the Commissioner.

(e) *Fixed fee contract—additional certification.* When the work has been completed under a fixed fee contract, the borrower's certification shall also show:

(1) Allocations of general overhead items as are acceptable to the Commissioner; and

(2) A reasonable allowance for the builder's profit as established by the Commissioner.

(f) *Contractor's certification—fixed fee contract.* A contractor receiving a fixed fee shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and less any kickbacks, rebates, trade discounts,

or other similar payments to the builder or borrower corporation or any of its officers, directors or stockholders.

(g) *Adjustment resulting from cost certification.* If the principal obligation of the loan exceeds the actual cost to the borrower of the improvement, the loan shall be reduced by the amount of such excess prior to the final endorsement for insurance.

(h) *Certificate of public accountant.* The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 220.630 Records.

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

§ 220.632 Effects of agreement.

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

§ 220.633 Cost certification incontestable.

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

Subpart D—Contract Rights and Obligations—Projects

PROJECT MORTGAGE INSURANCE

§ 220.751 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 220 of the National Housing Act, except the following provisions:

Sec.
207.259 Insurance benefits.
207.256b Modification of mortgage terms.

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

§ 220.753 Forbearance relief.

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

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

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

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

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

§ 220.760 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except that all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any differences between the total amount of the claim and the amount of the debentures issued.

§ 220.765 Special insurance benefits—forbearance relief cases.

(a) Upon a failure of the mortgagor to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, the mortgagee shall be entitled to obtain a special insurance payment in cash, in lieu of the insurance benefits otherwise provided under this subpart. To receive the special insurance payment, the mortgagee shall assign the mortgage to the Commissioner in compliance with the requirements of § 207.258(b) of this chapter.

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

INSURED PROJECT IMPROVEMENT LOANS

§ 220.800 Definitions.

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

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

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

§ 220.801 Initial insurance endorsement.

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

§ 220.802 Final insurance endorsement.

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

§ 220.803 Effect of insurance endorsement.

From the date of initial endorsement, the Commissioner and the lender shall

be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

§ 220.804 Insurance premiums.

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

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

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

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

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

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

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

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

§ 220.805 Termination of insurance.

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

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

§ 220.806 Pro rata refund of insurance premium.

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

§ 220.810 Definition of default.

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

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

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

§ 220.811 Date of default.

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

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

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

§ 220.812 Notice of default.

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

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

§ 220.813 Commissioner's right to require acceleration.

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

§ 220.814 Election of action.

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

§ 220.820 Maximum claim period.

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

§ 220.821 Items to be filed on submitting claim.

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

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

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

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

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

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

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

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

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

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

§ 220.822 Claim computation; items included.

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

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

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

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

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

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

(b) *Method of payment.* Payment of claim shall be made in the following manner:

(1) *Payment in cash.* Unless a written request for payment in debentures is filed with the application, payment shall be made in cash.

(2) *Optional payment in debentures.* Payment shall be made in debentures upon filing a written request with the application.

§ 220.823 Claim computation; items deducted.

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

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

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

§ 220.830 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the loan was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
4¼	Jan. 1, 1967	Jan. 1, 1968
5⅛	Jan. 1, 1968	July 1, 1969
6⅛	July 1, 1969	Jan. 1, 1970
6⅜	Jan. 1, 1970	July 1, 1970
6¾	July 1, 1970	Jan. 1, 1971
6⅛	Jan. 1, 1971	July 1, 1971
5⅞	July 1, 1971	

§ 220.832 Maturity of debentures.

Debentures shall mature 10 years from the date of issue.

§ 220.834 Registration of debentures.

Debentures shall be registered as to principal and interest.

§ 220.836 Denomination of debentures.

Debentures are available in denominations of $50, $100, $500, $1,000, $5,000, and $10,000. The Commissioner shall issue debentures in the largest available denominations unless otherwise requested by the lender.

§ 220.838 Redemption of debentures.

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

§ 220.840 Issue date of debentures.

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

§ 220.842 Cash adjustment.

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

§ 220.850 Assignment of insured loans.

(a) An insured loan may not be transferred or pledged prior to the full disbursement of the loan, except with the prior written approval of the Commissioner which approval may be subject to such conditions and qualifications as the

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

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

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

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

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

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Subpart A—Eligibility Requirements—Low Cost Homes

INSURANCE UNDER 221(d)(2)

§ 221.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages on dwellings insured under section 221 of the National Housing Act except the following provisions:

Sec.
203.17 Mortgage provisions.
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203.40 Location of property.
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(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 221 of the Act.

§ 221.3 Definition of displaced family.

As used in this subpart, the term "displaced family" shall mean a family displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

§ 221.5 Mortgage form.

The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner.

§ 221.10 Maximum mortgage amount—dollar limitation.

A mortgage executed by a mortgagor who is an occupant of the property shall not exceed:

(a) $18,000 for a one-family residence, except that such amount may be increased to $21,000 in the case of a family with five or more persons.

(b) $24,000 for a two-family residence.

(c) $32,400 for a three-family residence.

(d) $39,600 for a four-family residence.

§ 221.11 Increased mortgage amount—high cost areas.

In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitations set forth in § 221.10 to amounts not to exceed:

(a) $21,000 for a one-family residence, except that such amount may be increased to $24,000 in the case of a family with five or more persons.

(b) $30,000 for a two-family residence.

(c) $38,400 for a three-family residence.

(d) $45,600 for a four-family residence.

§ 221.12 Eligibility limitations—two- to four-family residences.

A mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be eligible for insurance under this section unless one of the dwelling units is occupied by the mortgagor.

§ 221.20 Maximum mortgage amount—loan-to-value limitation.

In addition to meeting the dollar limitations as set forth in this subpart, the mortgage amount shall be limited as follows:

(a) *Occupant mortgagors.* (1) When the mortgagor is the occupant of the property, the mortgage shall not exceed:

(i) The Commissioner's estimate of the appraised value of the property as of the date the mortgage is accepted for insurance, where repair and rehabilitation is not involved; or

(ii) In the case of rehabilitation, the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(2) The limitations in subparagraph (1) of this paragraph are applicable only if:

(i) The application for insurance is for the construction of a proposed dwelling which is approved for mortgage insurance prior to the beginning of construction; or

(ii) Construction was completed more than 1 year preceding the date of the application for insurance; or

(iii) The dwelling was approved for guaranty, insurance, or direct loan by the Administrator of Veterans Affairs prior to the beginning of construction.

(3) If the conditions of subparagraph (2) are not met, the amount of the mortgage shall not exceed 90 percent of the amount computed under subparagraph (1) of this paragraph.

(b) *Nonoccupant mortgagors.* If the property is to be built or acquired and rehabilitated for sale and the insured mortgage financing is required to facilitate the construction or the repair or rehabilitation of the dwelling and provide financing pending the subsequent sale thereof to a qualified owner-occupant, 85 percent of the amount computed under paragraph (a) or 85 percent of the value of the property, whichever is the lesser, as of the date the mortgage is accepted for insurance, if the mortgagor is not the occupant.

§ 221.21 Maximum mortgage amount—limitations on refinancing.

In addition to the limitations set forth in §§ 221.10, 221.11, and 221.20, in any case involving refinancing, the mortgage shall not exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Commissioner, required to refinance the existing indebtedness secured by the property.

§ 221.25 Due date of mortgage.

The mortgage shall come due on the first day of the month.

§ 221.30 Maturity of mortgage.

(a) The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage, except that such maturity may be 35 or 40 years in the following instances:

(1) In the case of a displaced family, if it is determined by the Commissioner that the mortgagor is not able to make the required payments under a mortgage having a shorter amortization period.

(2) In the case of any other mortgagor, if it is determined by the Commissioner that the mortgagor is an owner occupant of the property and is not able to make the required payments under a mortgage having a shorter amortization period, and the dwelling:

(i) Was approved for mortgage insurance by the Commissioner prior to the beginning of construction or approved for guaranty, insurance, or direct loan by the Administrator of Veterans' Affairs prior to such amortization; and

(ii) Was inspected by the FHA and found to have been completed in compliance with the terms of the FHA commitment, or inspected by the VA and found to have been completed in compliance with the terms of the VA Certificate of Reasonable Value.

(b) No mortgage shall have a maturity exceeding three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements.

§ 221.32 Beginning of payments on mortgage.

The mortgage shall 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.

§ 221.35 Disbursement of mortgage amount.

The entire principal amount of the mortgage shall be disbursed to the mortgagor or his creditors for the mortgagor's account and with his consent.

§ 221.40 Amortization period of the mortgage.

The amortization period of the mortgage shall be either 10, 15, 20, 25, 30, 35, or 40 years by providing for either 120, 180, 240, 300, 360, 420, or 480 monthly amortization payments.

§ 221.45 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in multiples of $50.

§ 221.50 Mortgagor's minimum investment.

At the time a mortgage is insured, the mortgagor shall have paid, in cash or its equivalent, on account of the property at least 3 percent of the Commissioner's estimate of its acquisition cost, except where the mortgagor is a displaced family. A mortgagor qualifying as a displaced family shall have paid in cash or its equivalent on account of the property, at the time the mortgage is insured, not less than:

(a) $200 for a one-family dwelling;
(b) $400 for a two-family dwelling;
(c) $600 for a three-family dwelling;
(d) $800 for a four-family dwelling;

§ 221.54 Inclusion of closing costs and expenses in cash payment.

The mortgagor's required minimum investment may include amounts covering settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

§ 221.55 Deferred sale of properties.

A mortgagor under a mortgage covering a one-family dwelling may, subject to such terms and conditions as the Commissioner may prescribe, be permitted to sell the property to a displaced person on a deferred payment basis, to provide for the accumulation of the required cash payment.

INSURANCE UNDER 221(h)

§ 221.60 Eligibility requirements for low income homeowners.

(a) *Application of subpart to section 221(h).* Except as provided in this section, all of the provisions of this subpart shall apply to the insurance of a home mortgage under section 221(h) of the National Housing Act.

(b) *Definitions.* As used in this section, the following terms shall have the meaning indicated:

(1) "Single family dwelling" includes a two family dwelling in which one of the units is occupied by the owner.

(2) "Assessment," when used in a mortgage covering a one family unit in a condominium project (except where the term refers to assessments and charges by the association of owners) means special assessments by state or local governmental agencies, districts, or other public taxing or assessing bodies.

(c) *Types of transactions.* The mortgage shall involve one of the following types of transactions:

(1) The financing of the purchase of a rehabilitated single family dwelling or a rehabilitated one family unit in a condominium project from a nonprofit mortgagor by a low income purchaser.

(2) The rehabilitation or improvement and refinancing of a single family dwelling owned and occupied by a mortgagor who has purchased the dwelling from a nonprofit organization that is engaged in purchasing, rehabilitating and selling substandard housing.

(d) *Application and commitment extension fees.* The mortgagee shall not be required to pay an application fee or a commitment extension fee, if the mortgage is financing the purchase of property from a nonprofit mortgagor that has paid the applicable fees required by § 221.506a in connection with a project mortgage covering the same property. Such fees shall be paid, where applicable, in connection with a mortgage involving the rehabilitation or improvement and refinancing of property owned by the mortgagor.

(e) *Income qualifications.* To qualify under this section, the mortgagor's income shall be approved by the Commissioner as meeting the requirements of section 221(h) of the Act.

(f) *Maximum mortgage amount.* The mortgage shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling being purchased.

(g) *Mortgage maturity.* The mortgage shall be limited to a term not exceeding the term of the project mortgage remaining at the time of the purchase.

(h) *Mortgagor's minimum investment.* At the time the mortgage is insured, the mortgagor shall have paid on account of property at the time of purchase or at the time of rehabilitation or improvement and refinancing, as applicable, not less than $200 (in cash or its equivalent) all or any part of which may be applied in payment of closing costs.

(i) *Mortgage interest rate.* (1) The mortgage shall initially bear interest at the rate of 1 percent, 2 percent or 3 percent per annum depending upon the income of the mortgagor. The 3 percent interest rate shall apply if 20 percent of the mortgagor's annual family income is sufficient to make mortgage payments of principal, interest, taxes, and insurance at the 3 percent rate. If 20 percent of the mortgagor's annual family income is insufficient to make such mortgage payments at the 3 percent rate, but is sufficient to make such payments at a 2 percent rate, then the interest rate shall initially be 2 percent per annum. If 20 percent of the mortgagor's annual family income is insufficient to make such mortgage payments at 2 percent, then the interest rate shall initially be 1 percent per annum.

(2) The mortgage shall provide that if the initial interest rate is set at 1 percent, the rate will be increased to 2 percent when the mortgagee determines that 20 percent of the family income of the mortgagor is sufficient to make mortgage payments of principal, interest, taxes, and insurance at the 2 percent rate, and to 3 percent when the mortgagee determines that 20 percent of the mortgagor's income is sufficient to make such mortgage payments at the 3 percent rate. The mortgage shall also provide for comparable increase to a 3 percent interest rate if the mortgage initially bears interest at 2 percent.

(3) The mortgage shall provide that if the rate of interest is increased, such rate shall not thereafter be decreased.

(4) In determining the mortgagor's family income, for the purpose of the 20 percent requirement specified in subparagraph (1) of this paragraph, there shall be deducted an amount equal to $300 for each person under 21 who is a member of the immediate family and living with such family; and the earnings of the person under 21 shall not be included in family income.

(j) *Interest rate increase—discontinuance of occupancy.* The mortgage shall provide that if the mortgagor does not continue to occupy the property, the interest rate shall increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage (where the mortgage finances the purchase of the property from a nonprofit mortgagor) or on the individual mortgage (where the mortgage finances the rehabilitation or improvement and refinancing of property owned by the mortgagor). If the property is sold to one of the following purchasers, the increase in interest rate shall not be required:

(1) A nonprofit organization which has been engaged in purchasing and rehabilitating deteriorating and substandard housing with financing provided pursuant to section 221(h) of the National Housing Act, except that the sale must be to the same nonprofit organization from which the unit was purchased if the mortgage finances such purchase.

(2) A public housing agency under the U.S. Housing Act of 1937 having jurisdiction over the area where the dwelling is located.

(3) A low income purchaser meeting the income requirements of section 221 (h) of the Act.

(k) *Mortgage requirements—purchase from nonprofit.* Where the mortgage is

financing the purchase of the property from a nonprofit mortgagor, the mortgage shall comply with each of the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling being purchased.

(2) It shall be limited to a term not exceeding the term of project mortgage remaining at the time of the purchase.

(l) *Property requirements—purchase of condominium unit.* Where the property being purchased from a nonprofit mortgagor involves a one-family unit in a condominium project, the following additional requirements shall be met:

(1) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(2) *Certificate by mortgagee.* The mortgagee shall certify as to each of the following:

(i) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(ii) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(iii) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(3) *FHA controls for consumer and public interest.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association or cooperative of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(4) *Project mortgage certification.* The project mortgagee shall certify that, without regard to any provisions that may be contained in the mortgage relating to prepayment, no charge is contemplated or has been collected for the prepayment in full of the project mortgage.

(5) *Mortgage covenant concerning common expenses and assessments.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership and a provision approved by the Commissioner by which the regulatory agreement is incorporated in and made a part of the mortgage.

INSURANCE UNDER 221(d)

§ 221.65 Eligibility requirements for low and moderate income purchaser of family unit in condominium.

(a) *Incorporation by reference.* Except as provided in this section, all of the provisions of this subpart shall apply to the insurance of a mortgage under section 221(d) of the National Housing Act covering the purchase of a family unit in a condominium by a low or moderate income mortgagor.

(b) *Purchaser qualifications.* To qualify as a mortgagor, the purchaser shall be approved by the Commissioner as having an income within the limits prescribed for occupants in projects financed with a below market interest rate mortgage insured pursuant to §§ 221.501 et seq.

(c) *Application and commitment fees.* A mortgagee shall not be required to pay an application fee or a commitment extension fee if the mortgagor is purchasing the family unit in connection with the initial conversion to condominium ownership of a project financed with a mortgage insured pursuant to §§ 221.501 et seq.

(d) *Mortgage requirements.* The mortgage shall comply with the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding 97 percent of the Commissioner's appraised value of the family unit, including the mortgagor's interest in the common areas and facilities, as of the date the mortgage is accepted for insurance.

(2) It shall bear interest at the below market rate in effect under § 221.518(b) at the time of the issuance of the commitment.

(3) It shall provide for complete amortization within 40 years from the beginning of amortization or within three-quarters of the Commissioner's estimate of the economic life of the building improvements, whichever period is the lesser.

(4) It shall provide that if the mortgagor does not continue to occupy the property, the interest rate shall increase to the maximum rate in effect under this subpart at the time the commitment for insurance was issued on the project mortgage, except that the increase in interest rate shall not be applicable if the property is sold to one of the following purchasers:

(i) A nonprofit organization approved by the Commissioner.

(ii) A low or moderate income purchaser meeting the requirements of paragraph (b) of this section.

(5) It shall initially bear interest at the rate of 3 percent, 4 percent, 5 percent or 6 percent per annum, depending upon the income of the mortgagor. The interest rate shall be established at the highest of such percentages as the mortgagor will be able to pay using 20 percent of his annual family income. A provision shall be included in the mortgage to require that if the mortgagee determines that 20 percent of the mortgagor's annual family income is sufficient to make mortgage payments at a greater interest rate than initially established, the interest rate shall be increased in 1 percent increments up to 6 percent per annum with any additional increment increasing the interest up to the maximum rate permitted under this subpart at the time the commitment was issued for the insurance of the mortgage pursuant to this subpart. In determining the mortgagor's family income, there shall be deducted an amount equal to $300 for each minor person who is a member of the immediate family and living with such family; and the earnings of the minor person shall not be included in family income.

(6) It shal provide that if the rate of interest is increased, such rate shall not thereafter be decreased.

(e) *Family unit price.* The price, including closing costs, for which the family unit is sold to the mortgagor shall not exceed the Commissioner's appraised value.

(f) *Downpayment by mortgagor.* At the time the mortgage is insured, the mortgagor shall have paid on account of the property not less than 3 percent of the acquisition cost, in cash or its equivalent, all or part of which may be applied in payment of closing costs.

(g) *Enabling instrument.* The family unit shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(h) *Certificate of mortgagee.* The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(i) *Regulatory agreement and conditions.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association or cooperative of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(j) *No prepayment charge.* The project mortgagee shall certify that, without regard to any provisions that may be contained in the mortgage relating to prepayment, no charge is contemplated or has been collected for the prepayment in full of the project mortgage.

(k) *Payment of common expenses.* The mortgage presented for insurance shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership and a provision approved by the Commissioner by which the regulatory agreement is incorporated in and made a part of the mortgage.

(l) *Definition of assessment.* As used in the mortgage, the term "assessment," except where it refers to assessments and charges by the Association of Owners, shall be defined to mean "special assessments by state or local governmental agencies, districts or other public taxing or assessing bodies."

Subpart B—Contract Rights and Obligations—Low Cost Homes

§ 221.251 Incorporation by reference.

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

Sec.
203.260 Method of payment of MIP.
203.261 Calculation of MIP.
203.265 Amount of initial MIP.
203.266 Due date of initial MIP.
203.267 Period covered by initial MIP.
203.268 Adjustment of initial MIP.
203.269 Pro rata payment of initial MIP.
203.275 Amount of annual MIP.
203.276 Due date of annual MIP.
203.277 Duration of annual MIP.
203.278 Pro rata payment of annual MIP.
203.285 Computation of adjusted premium.
203.286 Maximum adjusted MIP.
203.287 Prepayments excepted from adjusted premium charge.
203.295 Voluntary termination of insurance.
203.296 Computation of voluntary termination charge.
203.297 Maximum voluntary termination charge.
203.298 Exception from voluntary termination charge.
203.389 Waived title objections.
203.400 Method of payment.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.

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

§ 221.254 Mortgage insurance premiums, adjusted mortgage insurance premiums, and voluntary termination charges.

(a) All of the provisions of §§ 203.260 through 203.298 of this chapter relating to mortgage insurance premiums, adjusted mortgage insurance premiums, and voluntary termination charges shall apply to mortgages insured under this subpart, except that as to mortgages meeting the special requirements of § 221.60 or § 221.65, such provisions shall only be applicable under the circumstances prescribed in paragraph (b) of this section.

(b) Whenever the interest rate on a mortgage insured under this part as having met the special requirement of § 221.60 or § 221.65 shall have been increased to the maximum rate in accordance with § 221.60(j), § 221.65(d)(4) or § 221.65(d)(5), the provisions of §§ 203.260 through 203.298 of this chapter relating to mortgage insurance premiums, adjusted mortgage insurance premiums, and voluntary termination charges shall apply, except that:

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

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

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

(4) References to the 120th scheduled monthly payment shall be construed as the 120th scheduled monthly payment following the effective date of the change in interest rate required under the mortgage.

§ 221.255 Assignment option.

(a) The mortgagee has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the insured mortgage securing the same, provided such mortgage is not in default at the expiration of 20 years from the date it was endorsed for insurance. When such option has been exercised, the obligation of the mortgagee to pay the premium charges shall cease.

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

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

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

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

(f) Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect on the issue date, a date which shall be established as provided in § 203.410 of this chapter. The interest rate shall be established by the Commissioner in an amount not in excess of the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the 6-month period (consisting of January through June, or July through December) which includes the issuance date of such debentures, which applicable rate for each 6-month period shall be determined by the Secretary of the Treasury, at the request of the Commissioner, by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the calendar month next preceding the establishment of such rate of interest, on all outstanding marketable obligations of the United States having a maturity date of 15 years or more from the first day of such next preceding month, and by adjusting such estimated average annual yield to the nearest one-eighth of 1 per centum.

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

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

(1) The mortgagee shall determine, at least biennially, whether the mortgagor has continued to occupy the property securing the mortgage. If the mortgagee determines that the mortgagor is not occupying the property or that the mortgagor has sold the property subject to the mortgage to a purchaser not qualifying under the provisions of § 221.60(h) or § 221.65(d)(4) (as appropriate) for the continuation of a below market interest rate, interest

on such mortgage shall be computed by the mortgagee at the highest rate permissible under the mortgage. The computation at the higher rate shall be effective from the first day of the month following the month in which the right to collect interest at the increased rate first accrued, as determined by the mortgagee.

(2) The mortgagee shall determine the mortgagor's family income, at least biennially, and shall increase the mortgage interest pursuant to the requirements of §§ 221.60(g) and 221.65(d)(5), as appropriate, to comply with the requirements of such sections. The computation at the higher rate shall be effective from the first day of the month following the month in which the mortgagee determines that the mortgagor's family income was increased.

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

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

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

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

§ 221.275 Method of paying insurance benefits.

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

§ 221.280 Waived title objections.

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

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

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

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

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

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

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

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 221.300 Changes in the plan of apartment ownership.

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

§ 221.305 Condition of the multifamily structure.

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

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

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

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

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

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

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

§ 221.310 Assessment of taxes.

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

§ 221.315 Certificate of tax assessment.

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

§ 221.320 Certificate or statement of condition.

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

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

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

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

§ 221.325 Cancellation of hazard insurance.

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

Subpart C—Eligibility Requirements—Moderate Income Projects

§ 221.502 Application.

(a) An application for the issuance of either a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form.

(b) No application shall be considered unless the following applicable requirements are met:

(1) All of the exhibits called for in the application are submitted to the Commissioner.

(2) In a case involving a mortgage which is to bear interest at the below market rate provided in § 221.518(b), the Commissioner shall have issued a memorandum evidencing allocation of funds to the project.

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PART II

Section 2

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

REORGANIZATION OF TITLE

FEES

§ 221.503 Application for conditional commitment.

An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall accompany the application for a conditional commitment.

§ 221.504 Application for firm commitment.

An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the mortgage applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the mortgage applied for, shall also be submitted with the application for a firm commitment. The payment of a commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or constructed pursuant to the Atomic Energy Community Act of 1955, as provided in § 221.559(b)(4).

§ 221.505 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

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

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

§ 221.506 Fees on increases.

(a) *Fees on increases*—(1) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increased requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(c) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

§ 221.506a Combined fee—rehabilitation sales mortgagor.

In the case of a rehabilitation sales mortgagor, the fees provided in §§ 221.503 through 221.506 shall not be applicable. In lieu of such fees, a combined application, commitment, and inspection fee of $40 per dwelling unit shall be paid to the Commissioner when the application for insurance is filed.

§ 221.506b Transfer fee.

Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagor, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

§ 221.507 Refund of fees.

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

§ 221.508 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

COMMITMENT

§ 221.509 Issuance of commitment.

(a) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(b) *Types of commitments.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(c) *Terms of commitment.* (1) If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(i) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(ii) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(2) The term of a commitment may be extended in such manner as the Commissioner may, from time to time, prescribe.

(3) If the payment of a commitment fee is not received by the Commissioner within 30 days after the issuance of a commitment, the commitment shall expire on the 30th day.

(d) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

ELIGIBLE MORTGAGORS

§ 221.510 Eligible mortgagors.

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) *Nonprofit, builder-seller, and rehabilitation sales mortgagors.* (1) The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or

gain for itself or persons identified therewith and which the Commissioner finds is in no manner controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of states or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(2) The builder-seller mortgagor shall be a special type of mortgagor approved by the Commissioner which is organized:

(i) To construct or rehabilitate a multifamily project, and which has entered into a written agreement with a private nonprofit corporation, meeting the qualifications of subparagraph (1) of this paragraph, to sell the project (upon final endorsement) to the nonprofit corporation at a purchase price not to exceed the certified actual cost of the project pursuant to § 221.550.

(ii) To operate the project until the conveyance to the nonprofit mortgagor, subject to special controls and requirements of the Commissioner as to rents, charges, rates of return and method of operation.

(iii) To operate the project, in the event of failure to convey to a nonprofit mortgagor at final endorsement, or within such additional period as may be agreed to in writing by the Commissioner, as a limited distribution mortgagor subject to the supervision, controls and requirements prescribed by the Commissioner for such mortgagor.

(3) The rehabilitation sales mortgagor shall be a special type of nonprofit mortgagor which shall:

(i) Meet the qualifications of subparagraph (1) of this paragraph.

(ii) Undertake to purchase and rehabilitate deteriorating or substandard housing.

(iii) Under an agreement with the Commissioner, undertake to sell the rehabilitated housing to individuals or families having an income that meets the requirements of section 221(h) of the Act.

(b) *Public mortgagors.* A federal instrumentality, a state or political subdivision thereof, or an instrumentality of a state or of a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the U.S. Housing Act of 1937 and which is acceptable to the Commissioner. Such a mortgagor shall be regulated or supervised as to rents, charges and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(c) *Limited distribution mortgagor.* The limited distribution mortgagor shall be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the Commissioner) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation in such form and manner as is satisfactory to the Commissioner to effectuate the purposes of this subpart.

(d) *Cooperative and investor sponsor mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the Commissioner which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the Commissioner.

(2) The investor-sponsor mortgagor shall be a special type of mortgagor approved by the Commissioner which is organized to:

(i) Construct or rehabilitate a multifamily project, and transfer the project to a cooperative mortgagor within two years from the date of completion;

(ii) Operate the project until two years from the date of completion or until the conveyance to the cooperative mortgagor, whichever occurs sooner, subject to special controls and requirements of the Commissioner, including but not limited to, the disposition of net income;

(iii) Operate the project, in the event of failure to convey to a cooperative mortgagor within the two-year period as a limited distribution mortgagor subject to the controls and requirements of the Commissioner.

(3) Such a mortgagor will be regulated or restricted by the Commissioner as to rents or sales, charges, rate of return, and methods of operation in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart and protect the consumer interest.

(e) *General mortgagors.* Any mortgagor, approved by the Commissioner, not meeting the eligibility requirements of paragraphs (a) through (d) of this section which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation, in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

ELIGIBLE MORTGAGES

§ 221.511 Mortgage form.

The mortgage shall be:

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

(b) In the case of cooperative and investor sponsor mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the mortgagee and the Commissioner in writing.

§ 221.512 Disbursement of the mortgage.

The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage, to, or for the account of the mortgagor or to his creditors for his account and with his consent.

§ 221.513 Mortgage lien.

A mortgagor shall certify at final endorsement of the loan for insurance that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(b) There will not be outstanding any unpaid obligation contracted in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the Commissioner.

§ 221.514 Maximum mortgage amounts.

(a) *Principal obligation.* The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) *Dollar limitations.* (i) $12,500,000;

(ii) For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(*a*) $9,200 without a bedroom.

(*b*) $12,937.50 with one bedroom.

(*c*) $15,525 with two bedrooms.

(*d*) $19,550 with three bedrooms.

(*e*) $22,137.50 with four or more bedrooms.

(iii) Subdivision (ii) of this subparagraph shall not be applicable where the mortgagor qualifies as a rehabilitation sales mortgagor under the provisions of § 221.510(a)(3).

(2) *New construction.* (i) In the case of new construction where the mortgagor is a nonprofit, builder-seller, public, cooperative, or investor-sponsor, the Commissioner's estimate of replacement cost of the property or project when the improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner).

(ii) In the case of new construction where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builder's and sponsor's profit and risk

of 10 percent of the foregoing items exclusive of land unless the Commissioner, after determining such allowance is unreasonable, prescribes a lessor percentage.

(3) *Repair or rehabilitation.* (i) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a nonprofit, builder-seller, rehabilitation sales, public, cooperative, or investor-sponsor, the sum of the estimated cost of the repairs or rehabilitation of the project and the Commissioner's estimate of the value of the property before repairs or rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the sum of the estimated cost of the repairs and rehabilitation of the project and the Commissioner's estimate of the value of the property before repair and rehabilitation.

(4) *Purchase from local public agency.* If the mortgage involves the financing of the purchase of property which has been rehabilitated by a local public agency with federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949, the mortgage shall not exceed the following amounts:

(i) Where the purchaser is a mortgagor other than a general or limited distribution mortgagor, the appraised value of the property, as of the date the mortgage is accepted for insurance, or the actual cost of acquisition, which ever amount is the lesser.

(ii) Where the purchaser is a general or limited distribution mortgagor, 90 percent of the appraised value of the property, as of the date the mortgage is accepted for insurance, or 90 percent of the actual cost of acquisition as approved by the Commissioner, whichever amount is the lesser.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (a)(1)(ii) of this section not to exceed:

(1) $10,925 per family unit without a bedroom.

(2) $15,525 per family unit with one bedroom.

(3) $18,400 per family unit with two bedrooms.

(4) $23,000 per family unit with three bedrooms.

(5) $26,162.50 per family unit with four or more bedrooms.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in paragraphs (a)(1)(ii) and (b) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Maximum mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

(e) *Loans to cover 2-year operating loss*—(1) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such rate exceed the rate in effect under § 221.518(a) on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(4) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 221.515 Adjusted mortgage amount—rehabilitation projects.

A mortgage having a principal amount computed in compliance with this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the owner of an unencumbered fee simple estate, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation;

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit, builder-seller, public, cooperative, or investor-sponsor mortgagor.* If the mortgagor is a nonprofit, builder-seller, public, cooperative, or investor-sponsor, the Commissioner's estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the Commissioner's estimate of the value of such land and improvements prior to the repairs or rehabilitation.

(2) *General or limited distribution mortgagor.* If the mortgagor is a general or limited distribution mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(1) *Nonprofit, builder-seller, public, cooperative, investor-sponsor, or rehabilitation sales mortgagor.* If the mortgagor is a nonprofit, builder-seller, public, cooperative, investor-sponsor, or rehabilitation sales, the Commissioner's estimate of the cost of the proposed repairs or rehabilitation plus the lesser of either of the following:

(i) The actual purchase price of the land and improvements.

(ii) The Commissioner's estimate of the value of such land and improvements prior to the repair or rehabilitation.

(2) *General or limited distribution mortgagor.* If the mortgagor is a general or limited distribution mortgagor:

(i) 90 percent of the Commissioner's estimate of the cost of the repair or rehabilitation, plus

(ii) 90 percent of the actual price of the land and improvements, or the Commissioner's estimate of the value of such land and improvements prior to the repair or rehabilitation, whichever is the lesser as provided in this subdivision (ii).

§ 221.516 Maturity.

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

§ 221.517 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project

and commencement of amortization will not be longer than necessary to obtain sustaining occupancy.

§ 221.518 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application. Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(b) In the case of a mortgage executed by other than a general mortgagor, as defined in § 221.510, the mortgage shall bear interest at a rate not exceeding that set forth in paragraph (a) of this section up to and including the date of final endorsement by the Commissioner, at which time the rate of interest may (with the approval of the Commissioner) be lowered to 3 percent per annum.

§ 221.519 Mortgage to cover the entire property.

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

§ 221.519a Mortgage release provisions.

A mortgage executed by a rehabilitation sales mortgagor shall provide that at any time after final endorsement, the property covered by the mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released.

§ 221.520 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be required in connection with the insurance of an operating loss loan or a supplementary loan.

(b) The provisions of paragraph (a) of this section shall not apply where a lien inferior to the lien of the insured mortgage is given in favor of an agency of the United States under such circumstances as may be approved by the Commissioner.

§ 221.521 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against fire and such other hazards as the Commissioner, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in amount estimated by the Commissioner at the time of completion of the entire project or units therefor. The policies evidencing such insurance shall have attached thereto, a standard mortgagee clause making loss payable to the mortgagee and the Commissioner, as their interests may appear.

§ 221.522 Accumulation of accruals.

(a) Except in the case of mortgages bearing interest at the rate set out in § 221.518(b), the mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) In the case of all mortgages insured under this subpart, the mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 221.523 Application of payments.

(a) The mortgage shall provide that all monthly payments being made by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance, where applicable.

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

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of thirty days, within which time the default must be cured.

§ 221.524 Prepayment privileges.

(a) *Prepayment in full*—(1) *Without prior Commissioner consent.* A mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner in the following cases:

(i) Where the mortgage is insured under section 221(d)(4) of the Act.

(ii) Where the mortgagor is a limited distribution type, which is not receiving payments from the Commissioner under a rent supplement contract executed pursuant to the provisions of §§ 5.1 et seq. of this title, and where the prepayment occurs after the expiration of 20 years from the date of final endorsement of the mortgage.

(iii) Where the project is converted to condominium ownership or is purchased by a cooperative mortgagor, which actions are taken pursuant to section 221(i) or 221(j) of the Act.

(iv) Where the mortgage is insured pursuant to section 221(h) of the Act and the prepayment occurs as a result of a sale of the individual units comprising the project.

(2) *With prior Commissioner consent.* In all other cases, except those outlined in subparagraph (1), a mortgage indebtedness shall not be prepaid in full and the Commissioner's controls will not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

§ 221.525 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest and principal more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 221.526 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in

a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

§ 221.527 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the Commissioner as to each of the following points:

(1) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at the date the mortgage was executed.

Eligible Mortgagees

§ 221.528 Qualification of lenders.

The provisions of 203.1–203.9 of Part 203 of Subchapter C of this chapter shall govern the eligibility qualifications and requirements of mortgagees under this subpart.

Supervision of Mortgagors

§ 221.529 Form of regulation by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or reinsurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 221.530 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the Commissioner.

(b) The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the Commissioner.

(c) In all projects, except those involving rehabilitation where the mortgage does not exceed $200,000, a fund for replacements shall be established and maintained with the mortgagee. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.

(e) The mortgagor shall execute and deliver to the Commissioner a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the Commissioner on the date the certificate is executed. Such certificate shall be to the effect that, so long as the mortgage is insured or held by the Commissioner, the mortgagor's books and accounts will be kept in accordance with the requirements of the Commissioner; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the Commissioner; will be maintained for such periods of time as may be prescribed by the Commissioner; and will be available to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the Commissioner and mortgagee the following reports verified by the signature of such officers of the mortgagor as the Commissioner may designate and in such form as prescribed by the Commissioner:

(1) Monthly occupancy reports when required by the Commissioner;

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the Commissioner, certified to by an officer of the mortgagor and, when required by the Commissioner, prepared and certified by a Certified Public Accountant (or other person acceptable to the Commissioner), such reports to be submitted within sixty (60) days after the end of each fiscal year;

(3) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the insured mortgage;

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

§ 221.531 Supervision applicable to general mortgagors.

The following restrictions and regulations will be applicable to general mortgagors:

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the Commissioner prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest may be issued in such amounts and form as may be agreed upon by the mortgagor and the Commissioner.

(b) *Rate of return.* Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held.

No distribution of any kind may be made from borrowed funds.

(c) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants.

(d) *Mortgagor's equity investment*—(1) *Amount of deposit.* Unless it can be established to the satisfaction of the Commissioner, prior to the final endorsement of the mortgage for insurance, that the mortgagor has an investment in the project, represented by cash expenditures, in an amount equal to three percent (3%) of the total cost of the project as certified by the mortgagor and approved by the Commissioner, there shall be deposited in a special fund an amount equal to the difference between such three percent (3%) and the amount of any such investment for necessary expenses incident to the completion of the project. Disbursements from any such fund, prior to three years from the date of the final or initial-final endorsement of the mortgage for insurance, may be made only with the prior written approval of the Commissioner.

(2) *Cutoff date.* The provisions of subparagraph (1) of this paragraph shall be applicable only to those mortgages which have received final endorsement on or before November 15, 1962.

§ 221.532 Supervision applicable to limited distribution mortgagors.

(a) The provisions of § 221.531(b) (rate of return) shall apply to limited distribution mortgagors, except that the amount of any allowable distribution or disbursement from surplus cash shall not exceed in any one fiscal year more than 6 percent of the mortgagor's initial equity investment as determined by the Commissioner.

(b) The right of any allowable distribution or disbursement from surplus cash shall be cumulative.

§ 221.533 Supervision applicable to cooperative and investor sponsor mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the Commissioner.

(b) Except with the prior written approval of the Commissioner, no compensation shall be paid by the corporation to its officers or directors, as such, or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed upon by the Commissioner and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

§ 221.534 Supervision applicable to cooperative mortgagors.

(a) A general operating reserve shall be established and maintained as long as the mortgage insurance is in force, in a manner and for the purposes specified in the charter or regulatory agreement.

(b) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or patronage refunds.

§ 221.535 Supervision applicable to investor-sponsor mortgagors.

(a) *Investor-sponsor's escrow.* The mortgagee shall hold in escrow such amount as the Commissioner determines will be needed, in the event the project is not transferred to a cooperative within 2 years from the date of project completion, to reduce the principal of the mortgage to an amount authorized for a limited distribution mortgagor. The amount held in escrow may be disbursed to the mortgagor if the transfer occurs within the 2-year period. Where the transfer does not occur within such period, the escrow shall be applied against the mortgage or in such other manner as the Commissioner may direct.

(b) *Transfer to cooperative mortgagor.* The consideration for the transfer to a cooperative mortgagor shall be the assumption of the mortgage indebtedness plus a downpayment in an amount which, when added to the original principal, shall not exceed the actual cost of the investor sponsor as approved by the Commissioner.

§ 221.535a Supervision applicable to builder-seller mortgagors.

(a) *Builder-seller's escrow.* The mortgagee shall hold in escrow such amount as the Commissioner determines will be needed, in the event the project is not transferred to a nonprofit mortgagor at final endorsement or within such additional period as may be agreed to in writing by the Commissioner, to reduce the principal of the mortgage to an amount authorized for a limited distribution mortgagor. The amount held in escrow may be disbursed to the mortgagor if the transfer occurs at final endorsement or within such period as may be agreed to by the Commissioner. Where the transfer does not occur within the prescribed period, the escrow shall be applied against the mortgage or in such other manner as the Commissioner may direct.

(b) *Transfer to nonprofit mortgagor.* The consideration for the transfer to the nonprofit mortgagor shall be the assumption of the mortgage indebtedness to which may be added a cash payment in an amount which, when added to the original principal, shall not exceed the builder-seller's actual cost as approved by the Commissioner.

OCCUPANCY REQUIREMENTS

§ 221.536 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the Commissioner, as long as the Commissioner is the insurer, holder, or reinsurer of the mortgage, that the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family by reason of the fact that there are children in the family;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy services;

(c) Sell the project as long as the Commissioner is the insurer, holder, or reinsurer of the mortgage, unless the purchaser also certifies.

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

(a) *Initial occupancy.* In the case of a rental project owned by a mortgagor whose mortgage bears interest at the rate set out in § 221.518(b), initial occupancy shall be restricted to those determined by the Commissioner as having a low or moderate income and who are one of the following:

(1) A family.

(2) A single person 62 years of age or older.

(3) A single person who is less than 62 years of age, provided that occupancy by this age group shall be limited to 10 percent of the dwelling units in the project unless the occupants receive rent supplement benefits under the provisions of §§ 5.1 et seq. of this title, in which instance the 10 percent limitation shall not be applicable.

(4) A handicapped person meeting the qualifications of paragraph (d) of this section.

(b) *Continued occupancy.* Continued occupancy by tenants following a change in income or family composition subsequent to initial occupancy shall be under such conditions as the Commissioner may prescribe.

(c) *Preference for displacees.* In all cases, preference or priority of opportunity to rent dwelling units shall be given to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

(d) *Definition of handicapped.* For the purposes of this section, a person shall be considered as handicapped if he has a physical impairment which:

(1) Is expected to be of a long-continued and indefinite duration;

(2) Substantially impedes his ability to live independently; and

(3) Is of such a nature that his ability to live independently could be improved by more suitable housing conditions.

(e) *Temporary suspensions.* The occupancy requirements for initial occupancy, as prescribed in paragraph (a) of this section, may be temporarily suspended by the Commissioner for a period

not exceeding 1 year. The denial or the approval of a request for such temporary suspension shall be within the sole discretion of the Commissioner, and the approval of a temporary suspension of initial occupancy requirements shall be under such conditions and requirements as the Commissioner may prescribe.

§ 221.538 Applicability of prevailing wage requirements.

(a) *In general.* Prevailing wage requirements shall be applicable to mortgage insured under this subpart, except those specified in paragraph (b) of this section, and the compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) *Labor Standards.* Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

(2) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General, pursuant to § 5.6 (b) of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 F.R. 4431).

(3) *Ineligible advances.* No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant to the provisions of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 F.R. 4431).

(4) *Wage certificate.* No advance under any mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings, or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

(b) *Excepted transactions.* The requirements of paragraph (a) of this section shall not be applicable in either of the following instances:

(1) Where the mortgage is executed by a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3) and covers property on which there are located eight or fewer single family dwellings.

(2) Where, in connection with the construction of a project involving a cooperative, investor-sponsor, or rehabilitation sales mortgagor, the Commissioner has waived the requirements and each of the following circumstances occur:

(i) Where the laborers or mechanics not otherwise employed in the construction of such project (or the prospective owners of the individual dwellings, in the case of a rehabilitation sales mortgagor) are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(ii) Where the mortgagor establishes to the satisfaction of the Commissioner that amounts saved by the donated services will be credited to the account of the mortgagor.

§ 221.539 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

INSURANCE OF ADVANCES

§ 221.540 Financial requirements.

In order for a mortgage to be eligible for insurance of advances, the following financial requirements must be met by the mortgagor to the satisfaction of the Commissioner:

(a) A mortgagor, other than a nonprofit mortgagor, shall deposit with the mortgagee, or in a depository satisfactory to the mortgagee and under the control of the mortgagee, for the purpose of meeting the cost of equipping and renting the project subsequent to completion of construction of the entire project or units thereof and, during the course of construction, for allocation by the mortgagee to accruals for taxes, ground rents, mortgage insurance premiums, property insurance premiums, and assessments required by the terms of the mortgage:

(1) In the case of new construction, an amount equivalent to not less than two percent of the original principal amount of the mortgage.

(2) In the case of rehabilitation, an amount satisfactory to the Commissioner.

(b) Prior to initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the construction of the project. Such funds shall be held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner requiring all such funds to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, prior to the advance of any mortgage money.

(c) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(d) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

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

§ 221.541 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 221.542 Assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled

with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, assurance will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners or individuals operating as the general contractor.

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

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

(c) Rehabilitation projects involving 11 or less living units shall be excepted from the indemnity agreement, bonding, escrow, or letter of credit requirements of paragraphs (a) and (b) of this section, but the benefits of such exception shall not be available where it has already been applied to two rehabilitation projects (each involving 11 or less living units) currently being constructed and which involve the same mortgagor or general contractor.

APPLICATION OF NET INCOME

§ 221.542a Accounting for net income.

All net income received by a nonprofit, builder-seller, investor-sponsor, rehabilitation sales mortgagor shall be accounted for to the Commissioner and shall not be distributed without the prior approval of the Commissioner.

§ 221.543 Advance amortization.

(a) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the rental of the mortgaged property, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset the cost of approved capital improvements.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement. In addition to being applicable to commitments issued on or after December 3, 1963, the provisions of this subparagraph shall be applicable to commitments outstanding on such date where the mortgage has not received final endorsement.

(b) The provisions of paragraph (a) of this section shall not apply to the following:

(1) Investor-sponsor, builder-seller, nonprofit, or rehabilitation sales mortgagor (the distribution of net income by such mortgagors is controlled by § 221.542a).

(2) Cooperative mortgagors (the use of surplus funds by such mortgagors is prescribed in § 221.534).

(3) Projects involving rehabilitation where the mortgage does not exceed $200,000.

PROPERTY REQUIREMENTS

§ 221.544 Eligibility of property.

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

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(3) Under a lease having a period of not less than seventy-five years to run from the date of mortgage is executed; or

(4) Under a lease executed by a governmental agency, an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than fifty years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of all liens other than that of such mortgage.

§ 221.545 Development of property.

(a) *Obligation of mortgagor.* The mortgagor shall be obligated to develop the property as follows:

(1) A mortgagor, other than a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use.

(2) A rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3) shall be obligated to purchase and rehabilitate existing housing.

(b) *Minimum number of units.* (1) A project, other than a project to be rehabilitated by a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall consist of not less than five dwelling units and may be detached, semidetached, or row houses, or multifamily structures.

(2) A project, where the mortgagor is a rehabilitation sales mortgagor meeting the requirements of § 221.510(a)(3), shall consist of not less than four single family dwellings or four one-family units in a condominium. The single family dwellings may be detached, semidetached, or row houses. The family units shall be located in a structure or structures concerning which the mortgagor certifies that it intends, upon completion of the project, to commit the ownership of the project to a plan of apartment ownership approved by the Commissioner.

(c) *Compliance with governmental regulations.* The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

§ 221.546 Commercial and community facilities.

(a) *In general.* The project may include such commercial and community facilities as the Commissioner deems adequate to serve the occupants.

(b) *Urban renewal area projects.* Where the project is located in an urban renewal area, it may include such nondwelling facilities as the Commissioner determines will be desirable and consistent with the urban renewal plan and contribute to the economic feasibility of the project. Approval of such nondwelling facilities shall only be granted under the following conditions:

(1) That the project will remain predominantly residential.

(2) That the nondwelling facilities will not adversely affect the other business enterprises in the community.

(3) That the mortgagor, in a case involving a mortgage bearing interest at the special below market rate provided in § 221.518(b), agree to waive the right to receive dividends on its equity investment in the portion of the project devoted to commercial facilities.

(c) *Rehabilitation sales projects.* Commercial and community facilities shall not be included in a project involving a mortgage meeting the requirements of § 221.510(a)(3).

§ 221.546a Neighborhood characteristics.

In a case involving a mortgagor meeting the requirements of § 221.510(a)(3), the mortgagor shall establish to the satisfaction of the Commissioner either of the following:

(a) That the property to be rehabilitated is located in a neighborhood which is sufficiently stable and contains sufficient public facilities and amenities to support long-term values.

(b) That the rehabilitation to be carried out by the mortgagor plus its related

activities and the activities of other owners of housing in the neighborhood, together with actions to be taken by public authorities, will be of such scope and quality as to give reasonable promise that a stable environment will be created in the neighborhood.

COST CERTIFICATION REQUIREMENTS

§ 221.547 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 221.548.

(2) To execute a certificate of actual costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over:

(i) In the case of a general or limited distribution mortgagor, 90 percent of actual cost; or

(ii) In the case of all other mortgagors, 100 percent of actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

(c) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.548 Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a public, limited distribution, investor sponsor or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the Commissioner makes the foregoing determination as to nonidentity of interest and it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is determined by the Commissioner that a cost plus form of contract is required to protect his interests.

(3) Where the mortgage is executed by a nonprofit or builder-seller mortgagor, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 221.549 Certificate as to subcontracts.

(a) If it is determined by the Commissioner that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor must certify in a form prescribed by the Commissioner prior to final endorsement that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.550 Certificate of actual cost—contents in general.

(a) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(b) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(1) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The offsite public utilities and streets not included in subparagraph (1) of this paragraph.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders, or partners. Any such payments shall be deducted from the costs determined under paragraph (b) of this section.

(d) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.550a Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor) an allowance for builder's and sponsor's profit and risk. The amounts of the allowance shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 221.550(b)(1). This allowance shall be 10 percent of the actual cost computed in accordance with § 221.550 excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 221.550 excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(d) *Nonapplicability to nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a nonprofit, builder-seller, cooperative, investor-sponsor, or rehabilitation sales mortgagor.

§ 221.551 Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the Commissioner to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

(c) The provisions of paragraphs (a) and (b) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.552 Records.

(a) The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.553 Certificate of public accountant.

(a) In all projects, except those specified in paragraph (b) of this section, the certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditory standards to the extent deemed necessary to verify the actual costs.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving 40 or less living units or to a project involving a rehabilitation sales mortgagor.

§ 221.554 Value of land.

(a) Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.555 Reduction in mortgage amount—new construction.

(a) If the principal obligation of the mortgage exceeds (a) in the case of a general or limited distribution mortgagor, 90 percent, or (b) in the case of other mortgagors, 100 percent, of the total amount as shown by the certificate of actual cost plus the value of land, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

(b) The provisions of paragraph (a) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.556 Reduction in mortgage amount—rehabilitation.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 221.550 and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or (1) in the case of a general or limited distribution mortgagor, 90 percent, or (2) in the case of all other mortgagors, 100 percent of the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds (1) in the case of a general or limited distribution mortgagor, 90 percent, or (2) in the case of all other mortgagors, 100 percent, of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

(d) *Nonapplicability to rehabilitation sales mortgagors.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a rehabilitation sales mortgagor.

§ 221.557 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 221.550 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Federal Housing Administration, and of the Federal Housing Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

§ 221.558 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification as required by § 221.550 such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

OTHER ELIGIBLE MORTGAGES

§ 221.559 Eligibility of miscellaneous type mortgages.

(a) A mortgage covering five or more rental units and which meets the requirements of this part, except as modified by this section, shall be eligible for insurance under this subpart.

(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 Laws 9, 73, or 353, Seventy-seventh Congress, as

amended (including any additional 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, of any housing (including any additional property acquired, held, or constructed in connection with such housing or to 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, of any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, Ohio; Greenbelt, Maryland; and Greendale, Wisconsin, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employees' 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, Washington, 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 preference 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 any 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 (as defined in § 203.12), their families and others: *Provided*, That in no case may the principal obligation of a mortgage referred to in this subparagraph 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 subparagraphs (1), (2), (3), and (4) of this paragraph.

§ 221.559a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, or construction 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 (other than those relating to labor standards and prevailing wages) 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 under all of the special surrounding circumstances, 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.

§ 221.559b Eligibility for insurance under section 221(j) of mortgage financing purchase of existing project by cooperative.

(a) A mortgage given to finance the purchase by a cooperative mortgagor from a mortgagor other than a cooperative or a private nonprofit corporation or association shall be eligible for insurance under this subpart, if such mortgage meets the requirements of this subpart, except as modified by this section.

(b) The project being purchased by the cooperative shall have been covered by a mortgage insured under this subsection bearing interest at the below market rate prescribed in § 221.518(b).

(c) The insurance of such mortgage shall be governed by the following:

(1) The amount of the mortgage shall not exceed the lesser of the amounts determined by applying the formulas in subdivision (i) or (ii) of this subparagraph as follows:

(i) An amount, the debt service of which can be met from project income remaining after payment of all operating expenses, taxes, and required services, provided the project is operated on a nonprofit basis and the rental charges in effect at the time of purchase are not raised.

(ii) The project's actual cost at the time of completion (as determined by the Commissioner) or the project's fair market value for residential purposes as determined by the Commissioner on the basis of operating the project without the benefit of a below market interest rate mortgage or rent supplement payments and without the controls by the Commissioner over the project imposed by the provisions in this subpart, whichever amount is the greater.

(2) Subject to limitations prescribed in subparagraph (1) of this paragraph, it is intended that the mortgage will provide an amount which will enable the seller of the project to realize a net amount out of the sales proceeds sufficient to recover its investment and to retire the outstanding mortgage.

(3) The term of the mortgage may exceed the remaining term of the original mortgage on the project, but in no event may it exceed the Commissioner's estimate of the remaining economic life of the project.

(4) The mortgage shall bear interest at the below market rate prescribed in § 221.518(b).

§ 221.560 Eligibility of refinanced mortgages.

(a) A mortgage given to refinance an existing mortgage insured under the act may be insured under this subpart pursuant to section 223(a)(7) of the act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added—

(a) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(b) The costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(c) Loan closing charges.

(iii) The Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property, except for general or limited distribution mortgagors when the amount shall not exceed 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determined that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(b) Notwithstanding any other provision of this subpart, a mortgage given by a mortgagor other than a general mortgagor to refinance a mortgage covering an existing property or project located in an urban renewal area, shall be eligible for insurance under this subpart, provided the Commissioner finds that such insurance will facilitate the

occupancy of dwelling units in the property or project by families of low or moderate income or families displaced from an urban renewal area or displaced as a result of governmental action.

(c) The provisions of §§ 221.503 through 221.508 relating to fees and charges shall not be applicable to commitments issued on or before December 31, 1962, for refinancing an existing insured mortgage if:

(1) The mortgage meets the requirements of paragraph (a) of this section and bears interest not in excess of the rates provided in § 221.518(b); or

(2) The mortgage meets the requirements of paragraph (b) of this section and bears interest not in excess of the rates prescribed in § 221.518(b).

§ 221.561 Reinsurance of Commissioner-held mortgages.

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

TITLE

§ 221.562 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the Commissioner and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 221.563 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with subparagraph (2), (3), or (4) of this paragraph, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

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

(3) A Torrens or similar title certificate.

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

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

EXTENSION OF TIME

§ 221.564 Actions by Commissioner.

Where the mortgagee or lender has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 221.749 Effect of amendments.

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

Subpart D—Contract Rights and Obligations—Moderate Income Projects

§ 221.751 Incorporation by reference.

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

Sec.
207.252 First, second and third premium.
207.253 Adjusted premium and termination charges.
207.259 Insurance benefits.

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

§ 221.755 First, second, and third premium.

All of the provisions of § 207.252 of this chapter, relating to mortgage insurance premiums, apply to mortgages insured under this subpart that provide for interest at the market rate prescribed in § 221.518(a) but such provisions shall not apply to:

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

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

§ 221.760 Adjusted premium and termination charges.

All of the provisions of § 207.253 of this chapter, relating to adjusted premium and termination charges, apply to mortgages insured under this subpart that provide for interest at the market rate prescribed in § 221.518(a), but such provisions shall not apply to:

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

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

§ 221.761 Forbearance relief.

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

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

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

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

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

§ 221.762 Payment of insurance benefits.

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

(a) *Method of payment.* All of the insurance benefits provided by § 207.259 (b) or (c) of this chapter shall be paid in cash unless the mortgagee files with the application a written request for payment in debentures. If such a request is made, payment will be made in debentures with a cash payment to adjust any difference between the total amount of the insurance settlement and the amount of the debentures issued.

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

§ 221.763 Special insurance benefits—forbearance relief cases.

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

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

§ 221.770 Assignment option.

The mortgagee has the option to assign, transfer and deliver to the Commissioner the original credit instrument and the insured mortgage securing the same, provided such mortgage is not in default at the expiration of 20 years from the date of final endorsement of the mortgage.

§ 221.775 Option period.

The mortgagee may exercise its option to assign within one year following the twentieth anniversary of the date the mortgage was finally endorsed for insurance.

§ 221.780 Issuance of debentures.

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

§ 221.785 Date of maturity of debentures.

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

§ 221.790 Debenture interest rate.

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

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Sec.
222.1 Incorporation by reference.
222.2 Definition of terms.
222.3 Maximum mortgage amount; dollar limitation.
222.4 Maximum mortgage amount; ratio of loan-to-value limitation.
222.5 Mortgagor's minimum investment.
222.6 Application of payments.
222.7 Use of mortgage proceeds.
222.8 Eligible mortgagors.
222.9 Eligible types of dwellings.
222.10 Requirements for family unit in condominium.
222.50 Transfer of insurance.

Subpart B—Contract Rights and Obligations

Sec.
222.251 Incorporation by reference.
222.252 Definition of terms.
222.253 Annual mortgage insurance premiums and charges.
222.254 Prepayment premiums.
222.255 Pro-rata refund in event of prepayment.
222.260 Waived title objections.

Special Provisions Applicable Only to Mortgages Involving Condominium Units

222.265 Changes in the plan of apartment ownership.
222.270 Condition of the multifamily structure.
222.275 Assessment of taxes.
222.280 Certificate of tax assessment.
222.285 Certificate or statement of condition.
222.290 Cancellation of hazard insurance.

Authority: The provisions of this Part 222 issued under sec. 211, 52 Stat. 23, as amended; sec. 222, 68 Stat. 603, as amended; 12 U.S.C. 1715b, 1715m.

Subpart A—Eligibility Requirements

§ 222.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply with full force and effect to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.
203.18 Maximum mortgage amounts.
203.24 Application of payments.
203.31 Owner-occupancy in military service.
203.38 Location of dwelling.
203.50 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 222 of the National Housing Act.

§ 222.2 Definition of terms.

As used in this subpart the terms—

(a) "Secretary" shall mean the Secretary of Defense or, in the case of the U.S. Coast Guard, the Secretary of Transportation and any officer or employee designated by either of such Secretaries to issue certificates of eligibility and certificates of termination.

(b) "Certificate of eligibility" means the official certificate issued by the Secretary to the Federal Housing Commissioner which established that the person designated on the certificate as the serviceman has met the eligibility requirements set forth in section 222 of the National Housing Act as amended.

(c) "Serviceman" means a person to whom the Secretary has issued a certificate of eligibility.

(d) "Period of ownership by serviceman" means that period of time during which a military service is required to pay mortgage insurance premiums to the Federal Housing Commissioner, commencing with the date the Commissioner endorses a mortgage for insurance and

terminating when the Secretary furnishes the Commissioner with a certificate indicating that the military service will no longer be liable for payment of insurance premiums to the Commissioner.

§ 222.3 Maximum mortgage amount; dollar limitation.

The mortgage shall involve a principal obligation in an amount not in excess of $33,000, except that a mortgage meeting the requirements of § 203.18(d), 221.10, or 221.11 of this chapter shall not exceed the dollar limitation provided in the applicable section.

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

The mortgage shall not exceed the lesser of the following:

(a) 97 percent of $15,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $15,000 but not in excess of $25,000, and 85 percent of such value in excess of $25,000, if:

(1) The dwelling was approved for insurance by the Commissioner prior to the beginning of construction; or

(2) Construction was completed more than one year preceding the date of the application for insurance; or

(3) The dwelling was approved for guaranty, insurance, or direct loan by the Administrator of Veterans' Affairs prior to the beginning of construction.

(b) 90 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 85 percent of such value in excess of $25,000 if the dwelling does not meet the requirements of paragraph (a) of this section.

(c) An application for mortgage insurance filed prior to November 1, 1965 need not meet the conditions set forth in subparagraphs (1), (2), and (3) of paragraph (a).

§ 222.5 Mortgagor's minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

§ 222.6 Application of payments.

(a) Notwithstanding the provisions of § 203.24 of this chapter and until such time as the mortgagee has been notified by the Commissioner that the period of ownerships by serviceman has been terminated the monthly payments to be made by the mortgagor shall be applied to the following items in the order set forth:

(1) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(2) Service charge, if any;

(3) Interest on the mortgage; and

(4) Amortization of the principal of the mortgage.

(b) After receipt of notification from the Commissioner that the period of ownership by serviceman has been terminated the mortgagee shall apply all monthly payments received from the mortgagor in the order set forth in § 203.24 of this chapter.

§ 222.7 Use of mortgage proceeds.

The proceeds of mortgages shall be used for the purpose of financing the construction or purchase of an eligible dwelling by a serviceman.

§ 222.8 Eligible mortgagors.

A mortgagor must meet the requirements of §§ 203.32 to 203.36 of this chapter and in addition must hold a certificate of eligibility issued by the Secretary indicating that the mortgagor meets the eligibility requirements set forth in section 222 of the National Housing Act as amended.

§ 222.9 Eligible types of dwellings.

The mortgage shall involve one of the following types of dwellings:

(a) A single family dwelling.

(b) A one-family unit in a condominium project, together with an individual interest in the common areas and facilities serving the project.

§ 222.10 Requirements for family unit in condominium.

Where the dwelling involved is a one-family unit in a condominium project, the following additional requirements shall be met:

(a) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(b) *Certificate by mortgagee.* The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(c) *FHA controls for consumer and public interest.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(d) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership and a provision approved by the Commissioner by which the regulatory agreement is incorporated in and made a part of the mortgage.

(e) *Definition of term "assessment".* As used in the mortgage, the term "assessment", except where it refers to assessments and charges by the Association of Owners, shall mean special assessments by State or local governmental agencies, districts or other public taxing or assessing bodies.

§ 222.50 Transfer of insurance.

The insurance of a mortgage pursuant to §§ 203.1 et seq. (Part 203, Subpart A); §§ 213.501 et seq. (Part 213, Subpart C); §§ 220.1 et seq. (Part 220, Subpart A); §§ 221.1 et seq. (Part 221, Subpart A); §§ 234.1 et seq. (Part 234, Subpart A); §§ 235.1 et seq. (Part 235, Subpart A); §§ 237.1 et seq. (Part 237, Subpart A); §§ 809.1 et seq. (Part 809, Subpart A); or §§ 810.1 et seq. (Part 810, Subpart C), all of this chapter, covering a single-family dwelling or a family unit in a condominium project may, with the approval of the Commissioner and upon the request by the mortgagee, be transferred for insurance under this subpart, if the mortgage indebtedness has been assumed by a serviceman who holds a certificate of eligibility issued by the Secretary and who becomes the owner of the property and either occupies the property or certifies that his failure to do so is the result of his military assignment, or, in the case of the Coast Guard, other assignment.

Subpart B—Contract Rights and Obligations

§ 222.251 Incorporation by reference.

(a) The provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act which refer to the mortgagee shall be construed to refer to the mortgagee or the service branch, as the case may be, in connection with mortgages insured under section 222 of the National Housing Act. In addition, all of the provisions Subpart B, Part 203 of this chapter, covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act except the following provisions:

Sec.	
203.389	Waived title objections.
203.420	Nature of Mutual Mortgage Insurance Fund.
203.421	Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422	Right and liability under Mutual Mortgage Insurance Fund.
203.423	Distribution of distributive shares.
203.424	Maximum amount of distributive shares.
203.425	Finality of determination.
203.440 et seq.	Insured home improvement loans.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the National Housing

Act shall be deemed to refer to section 222 of the National Housing Act, and all references to the Mutual Mortgage Insurance Fund or the Fund shall be construed to refer to the General Insurance Fund.

§ 222.252 Definition of terms.

The definitions set forth in §§ 203.251 and 222.2 of this chapter shall apply with full force and effect to this subpart and in addition the terms—

(a) "Service branch" means the military service of which a mortgagor is a member at the time of the issuance of a Mortgage Insurance Certificate or the endorsement of the credit instrument by the Commissioner pursuant to section 222 of the National Housing Act.

(b) "Certificate of termination" means the official notice issued by the Secretary to the Federal Housing Commissioner advising the Commissioner that the period of ownership by a serviceman has been terminated and the service branch will no longer be responsible for payment of mortgage insurance premiums.

§ 222.253 Annual mortgage insurance premiums and charges.

The service branch shall during the period of ownership by a serviceman have the responsibility for payment of all mortgage insurance premiums and charges. The mortgagee shall be responsible for payment of all such premiums or charges after it has been notified by the Commissioner that the period of ownership by the serviceman has been terminated.

§ 222.254 Prepayment premiums.

(a) The service branch shall have the responsibility for payment of all adjusted premium charges which are due and payable to the Commissioner upon the prepayment of an insured mortgage during the period of ownership by the serviceman. The mortgagee shall be responsible for payment of any such adjusted premium charge upon prepayment of an insured mortgage after the mortgagee has been notified by the Commissioner that the period of ownership by the serviceman has been terminated.

(b) In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to maturity, the mortgagee shall within 30 days thereafter notify the Commissioner of the date of prepayment and shall pay to the Commissioner an adjusted premium charge of 1 percent of the original principal amount of the prepaid mortgage: *Provided,* That when such payment in full prior to maturity occurs during the period of ownership by the serviceman the adjusted premium charge shall be paid to the Commissioner by the service branch.

(c) In no event shall the adjusted premium exceed the aggregate amount of premiums which would have been payable if the mortgage had continued to be insured until maturity.

(d) No adjusted premium shall be due or payable in the following cases:

(1) Where at the time of such prepayment there is placed on the mortgaged property a new insured mortgage;

(2) When the final maturity specified in the mortgage is accelerated solely by reason of partial prepayments made by the mortgagor which do not exceed in any one calendar year 15 percent of the original face amount of the mortgage, plus any increased amount resulting from open-end advances made pursuant to § 203.44 of this chapter.

(3) Where the final maturity specified in the mortgage is accelerated solely by reason of payments to principal to compensate for—

(i) Damage to the mortgaged property;

(ii) The conveyance of the mortgaged property pursuant to condemnation proceedings or in lieu of condemnation proceedings; or

(iii) A release of a part of such property if approved by the Commissioner:

(4) Where payment in full is made pursuant to a court order or of a delinquent mortgage on which foreclosure proceedings have been commenced, or for the purpose of avoiding foreclosure, if the transaction is approved by the Commissioner.

§ 222.255 Pro-rata refund in the event of prepayment.

Upon such prepayment the contract of insurance shall terminate and the Commissioner will refund to the service branch or to the mortgagee, as the case may be, for the account of the mortgagor an amount equal to the pro-rata portion of the current annual mortgage insurance premium and insurance charge in the case of open-end advances theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs: *Provided,* That no such refund will be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 222.260 Waived title objections.

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

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

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

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

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

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

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

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 222.265 Changes in the plan of apartment ownership.

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

§ 222.270 Condition of the multifamily structure.

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

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

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

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

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

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

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

§ 222.275 Assessment of taxes.

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

§ 222.280 Certificate of tax assessment.

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

§ 222.285 Certificate or statement of condition.

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

(1) Certify that the conditions of § 222.270(a) have been met; or

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

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

§ 222.290 Cancellation of hazard insurance.

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

PART 224—ARMED SERVICES HOUSING—MILITARY PERSONNEL [SEC. 803]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
224.251 Incorporation by reference.
224.255 Mortgage insurance premiums.
224.260 Adjusted premium and termination charges.
224.265 Insurance benefits.
224.275 Applicability to outstanding mortgages and commitments.

AUTHORITY: The provisions of this Part 224 issued under secs. 803, 807, 69 Stat. 647, as amended, 651; 12 U.S.C. 1748b, 1748f.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 224.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to armed services housing mortgages for military personnel insured under section 803 of the National Housing Act except the following provisions:

Sec.
207.252 First, second and third premiums.
207.253 Adjusted premium and termination charges.
207.259 Insurance benefits.
207.264 Effective date.

(b) For the purposes of this part all references in Subpart B, Part 207 of this chapter to section 207 of the act shall be construed to refer to section 803 of the act.

§ 224.255 Mortgage insurance premiums.

(a) The mortgagee, upon the initial endorsement of the mortgage for insurance, shall agree to pay to the Commissioner a first insurance premium of $1 per project for the construction period.

(b) On the date of the first principal payment on account of the mortgage, the mortgagee shall pay the first insurance premium and a second premium equal to ¼ of 1 percent of the average outstanding principal obligation for the following year.

(c) (1) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary date of the first principal payment, shall pay an annual mortgage insurance premium.

(2) With respect to mortgage insurance premiums:

(i) Due prior to August 1, 1965, the amount of the annual premium payment shall be equal to ¼ of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(ii) Due on or after August 1, 1965, the amount of the annual premium payment shall be equal to ⅛ of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

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

(e) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums, except the first premium, are payable in advance and no refund will be made of any portion thereof except that at the time of prepayment, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to such prepayment.

(f) Upon agreement between the mortgagor and mortgagee, approved by the Commissioner, premiums due under this section may be paid directly by the mortgagor to the Commissioner. Upon such agreement, the obligation of the mortgagor to make payments to the mortgagee for mortgage insurance premiums and the obligation of the mortgagee to pay such premiums to the Commissioner shall cease so long as the agreement remains in effect and shall be reinstated upon its revocation.

(g) A mortgage may be finally endorsed for insurance after it has been assigned to the Commissioner for the purpose of making effective the military guarantee of payment and effecting an orderly closing of the transaction. In such event, the mortgage insurance premium of $1 per project, provided in paragraph (a) of this section, shall cover both the construction period and the period of time the mortgage is held by the Commissioner, and the references in paragraphs (b), (c), and (d) of this section to the date of first principal payment shall be construed to mean the first day of the month following the date of the transfer of the mortgage from the Commissioner to another mortgagee.

§ 224.260 Adjusted premium and termination charges.

If the mortgage is prepaid prior to maturity or the insurance contract is voluntarily terminated, no adjusted premium or termination charges shall be due or payable.

§ 224.265 Insurance benefits.

All of the provisions of § 207.259 of this chapter relating to the payment of insurance benefits apply to mortgages insured under this part, except in cases involving assignment of the mortgage to the Commissioner, the 1 percent deduction specified in § 207.259(b)(2)(iv) of this chapter shall not be applied in computing such benefits.

§ 224.275 Applicability to outstanding mortgages and commitments.

The provisions of this subpart shall be effective as to all mortgages with respect to which a commitment to insure is issued on or after August 15, 1955.

PART 225—MILITARY HOUSING INSURANCE [SEC. 803]

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.
225.251 Incorporation by reference.
225.255 Mortgage insurance premiums.
225.260 Adjusted premium and termination charges.
225.265 Insurance benefits.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

AUTHORITY: The provisions of this Subpart B issued under sec. 803, 69 Stat. 647, sec. 807, 69 Stat. 651; 12 U.S.C. 1748b, 1748f.

§ 225.251 Incorporation by reference.

(a) All of the provisions of Subpart B of Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply to mortgages insured pursuant to section 803 of the National Housing Act as in effect prior to August 11, 1955, except the following provisions:

Sec.
207.252 First, second, and third premiums.
207.253 Adjusted premium and termination charges.
207.259 Insurance benefits.

(b) For the purposes of this subpart, all references in Subpart B of Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 803 of the Act as in effect prior to August 11, 1955.

§ 225.255 Mortgage insurance premiums.

The payment of mortgage insurance premiums shall be governed by the provisions of § 207.252 of this chapter except that:

(a) Where the mortgage insurance premium is due prior to August 1, 1965, the amount of the annual premium payment shall be equal to one-half of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(b) Where the property covered by the mortgage has been acquired by the Secretary of Defense or his designee and the mortgage insurance premium is due on or after August 1, 1965, the amount of the annual premium payment shall be equal to one-sixth of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

(c) Where the property has not been acquired by the Secretary of Defense or his designee, the amount of the annual mortgage insurance premium payment, regardless of when due, shall be equal to one-half of 1 percent per annum of the amount of the average outstanding principal obligation of the mortgage for the following year, without taking into account delinquent payments or prepayments.

§ 225.260 Adjusted premium and termination charges.

The termination of the mortgage insurance and the payment of an adjusted premium or termination charge shall be governed by the provisions of § 207.253 of this chapter, except that no adjusted premium or termination charge shall be due or payable to the Commissioner where, at the time of prepayment of the mortgage or termination of insurance, the property covered by the mortgage has been acquired by the Secretary of Defense or his designee.

§ 225.265 Insurance benefits.

The payment of insurance benefits shall be governed by the provisions of § 207.259 of this chapter, except that debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued prior to August 13, 1954, the debentures shall mature 10 years after the date of issue of such debentures.

(b) Where the mortgage was insured pursuant to a commitment issued on or after August 13, 1954, the debentures shall mature 20 years after the date of issue of such debentures.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

Subpart A—Eligibility Requirements

Sec.
226.1 Incorporation by reference.
226.2 Certificate of need.
226.3 Employment status certificate.
226.4 Maximum mortgage amount; dollar limitation.
226.5 Maximum mortgage amount; loan-to-value limitation.
226.6 Mortgage obligation in multiples.
226.7 Mortgagor's minimum investment.
226.8 Eligible mortgagors.
226.9 Requirements as to risk and economic soundness.
226.10 Guarantee of Fund from loss.

Subpart B—Contract Rights and Obligations

226.251 Incorporation by reference.

AUTHORITY: The provisions of this Part 226 issued under sec. 807, 69 Stat. 651, sec. 809, 70 Stat. 273, as amended; 12 U.S.C. 1748f, 1748h-1.

Subpart A—Eligibility Requirements

§ 226.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages under section 203 of the National Housing Act apply with equal force and effect to mortgages insured pursuant to section 809, except the following provisions:

Sec.
203.18 Maximum mortgage amounts.
203.28 Economic soundness of project.
203.42 Rental properties.
203.43a Eligibility of housing in declining urban areas.
203.50 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the National Housing Act shall be deemed to refer to section 809 of the National Housing Act.

§ 226.2 Certificate of need.

(a) *Issuance by Secretary of Defense.* No mortgage covering property located at or near a military installation shall be insured unless the Secretary of Defense, or his designee, shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilians employed in connection with a research or development installation of one of the military departments of the United States or a contractor thereof, and that there is no present intention to substantially curtail the number of the civilian personnel assigned or to be assigned to such installation. The certification shall be conclusive evidence to the Commissioner of the need for such housing.

(b) *Issuance by Administrator of the National Aeronautics and Space Administration.* A mortgage may be insured under this subpart secured by property which is intended to provide housing for a person employed or assigned to duty at or in connection with a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation. The mortgage shall not be insured, however, unless the Administrator of the National Aeronautics and Space Administration or his designee shall have certified to the Commissioner that the housing is necessary to provide adequate housing for civilian or military personnel employed or assigned to duty at or in connection with a research or development installation of the National Aeronautics and Space Administration and that there is no present intention to substantially curtail the number of the personnel assigned or to be assigned to such installation. This certification shall be conclusive evidence to the Commissioner of the need for such housing.

(c) *Issuance by Atomic Energy Commission.* A mortgage may be insured under this subpart secured by property which is intended to provide housing for a person employed at a research or development installation of the Atomic Energy Commission and which is located at or near such installation. The mortgage shall not be insured, however, unless the Atomic Energy Commission shall have certified to the Commissioner that the housing is necessary to provide adequate housing for persons employed at or in connection with a research or development installation of the Atomic Energy Commission and that there is no present intention to substantially curtail the number of the personnel assigned or to be assigned to such installation. This certification shall be conclusive evidence to the Commissioner of the need for such housing.

§ 226.3 Employment status certificate.

(a) *Certificate by Secretary of Defense.* No mortgage covering property

at a military installation shall be insured unless the Secretary of Defense, or his designee, has issued a certificate indicating that the mortgagor: (1) Requires housing; (2) is, on the date of the certificate, a civilian employee at a research or development installation of one of the military departments of the United States, or contractor thereof, at a research or development installation; and (3) is considered by the military department to be an essential, nontemporary employee at such date. Such certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and of the mortgagor's need for housing.

(b) *Certificate by Administrator of National Aeronautics and Space Administration.* (1) An employment status certificate shall be required in connection with a mortgage secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration and which is located at or near such installation. No mortgage shall be insured unless the Administrator of the National Aeronautics and Space Administration, or his designee, has issued a certificate indicating that the mortgagor on the date of the certificate:

(i) Requires housing;

(ii) Is a civilian employee or one of the military personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration, or is an employee of a contractor of such Administration who is employed at a research or development installation; and

(iii) Is considered by the National Aeronautics and Space Administration to be an essential, nontemporary employee of such Administration or of a contractor thereof.

(2) The certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and the mortgagor's need for housing.

(c) *Certificate by Atomic Energy Commission.* (1) An employment status certificate shall be required in connection with a mortgage secured by property which is intended to provide housing for a person employed or assigned to duty at a research or development installation of the Atomic Energy Commission and which is located at or near such installation. No mortgage shall be insured unless the Atomic Energy Commission has issued a certificate indicating that the mortgagor on the date of the certificate:

(i) Requires housing;

(ii) Is a civilian employee or one of the military personnel employed or assigned to duty at a research or development installation of the Atomic Energy Commission, or is an employee of a contractor of such Commission who is employed at a research or development installation; and

(iii) Is considered by the Atomic Energy Commission to be an essential, nontemporary employee of such Commission or of a contractor thereof.

(2) The certificate shall be conclusive evidence to the Commissioner of the employment status of the mortgagor and the mortgagor's need for housing.

§ 226.4 Maximum mortgage amount; dollar limitation.

The mortgage shall involve a principal obligation in a dollar amount not in excess of:

(a) $33,000 in the case of a dwelling designed principally for a one-family residence.

(b) $35,750 in the case of a two-family residence.

(c) $35,750 in the case of a three-family residence.

(d) $41,250 in the case of a four-family residence.

In addition to the dollar limitation prescribed in this section the mortgage amount is subject to a loan-to-value limitation as provided in § 226.5.

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

(a) In addition to meeting the dollar limitation set forth in § 226.4, the mortgage shall be in an amount not exceeding the following:

(1) *Approval prior to construction.* If the mortgage covers a dwelling approved for mortgage insurance (or for guaranty, insurance, or a direct loan by the Administrator of Veterans Affairs) prior to the beginning of construction or a dwelling which was completed more than 1 year preceding the date of the application for mortgage insurance, the sum of the following percentages of the Commissioner's appraised value of the property, as of the date the mortgage is accepted for insurance:

(i) 97 percent of the first $15,000 of such value (100 percent of $15,000 of such value or the sum of such value not in excess of $15,000 and the items of prepaid expense approved by the Commissioner minus $200, whichever appraisal amount or sum is the lesser, in the case of a mortgagor qualifying as a veteran).

(ii) 90 percent of such value in excess of $15,000, but not in excess of $25,000.

(iii) 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of such value in excess of $25,000.

(2) *No prior approval.* A loan to value limitation of 90 percent of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and 80 percent (85 percent in the case of a mortgagor qualifying as a veteran) of such value in excess of $25,000, if the dwelling does not meet the requirements in the introductory text of subparagraph (1) of this paragraph.

(b) Veteran qualifications: The special veteran terms provided in paragraph (a) shall only be applicable to a mortgage covering a single family dwelling executed by a mortgagor who submits to the Commissioner one of the following certifications:

(1) A Certificate of Veteran Status from the Veterans Administration establishing that he has served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, and the Air National Guard of the United States) of the United States and was discharged or released therefrom under conditions other than dishonorable.

(2) A certificate issued by the Secretary of Defense establishing that the mortgagor performed extra hazardous service while serving in the armed forces for a period of less than 90 days.

§ 226.6 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in an amount of $100 or multiples thereof (except that a mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25 or 30 years, may be in an amount of $50 or multiples thereof).

§ 226.7 Mortgagor's minimum investment.

At the time the mortgage is insured, the mortgagor shall have paid in cash or its equivalent the following minimum amount.

(a) In all cases (except those involving a veteran meeting the requirements of § 226.5(b)), the minimum investment shall be at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount, as the Commissioner may determine.

(b) In a case involving a veteran meeting the requirements of § 226.5(b), the minimum investment shall be $200 which may include settlement costs, initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses as approved by the Commissioner.

§ 226.8 Eligible mortgagors.

No mortgage shall be insured unless executed by a mortgagor who meets the employment status requirements as set forth in § 226.3 and who at the time of insurance is the owner of the property and either occupies the property or certifies that his failure to do so is the result of a change of his employment.

§ 226.9 Requirements as to risk and economic soundness.

A mortgage may be accepted for insurance by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 226.10 Guarantee of Fund from loss.

If the Commissioner determines that the insurance of mortgages on housing as certified by the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, or the

Chairman of the Atomic Energy Commission is not an acceptable risk, he may require the Secretary, the Administrator, or the Chairman, as the case may be, to guarantee the General Insurance Fund against loss with respect to mortgages insured under this subpart.

Subpart B—Contract Rights and Obligations

§ 226.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 809 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 809 of the act and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

Subpart A—Eligibility Requirements—Projects

Sec.
227.1 Incorporation by reference.
227.5 Definitions of terms as used in this subpart.
227.10 Preference in sale or rental.
227.15 Insurance risk and economic soundness.
227.20 Reduced mortgage amount—leaseholds.
227.25 Eligible mortgages—form.
227.27 Prepayment privilege; prepayment and late charge.
227.30 Eligible mortgagors.
227.35 Maximum mortgage amounts—Multifamily Rental Project.
227.40 Maximum mortgage amounts—multifamily sales project.
227.45 Increased mortgage amounts—high cost areas.
227.47 Loans to cover 2-year operating loss.
227.50 Mortgage release provisions.
227.55 Cost certification.

Subpart B—Contract Rights and Obligations—Projects

227.251 Incorporation by reference—Multifamily, Sales or Rental Project.
227.253 Adjusted premium and termination charges.

Subpart C—Eligibility Requirements—Individual Mortgages

227.501 Incorporation by reference.
227.505 Definitions of terms as used in this subpart.
227.510 Preference in sale or rental.
227.515 Insurance risk and economic soundness.
227.520 Reduced mortgage amounts—leaseholds.
227.525 Eligible mortgages—form.
227.530 Eligible mortgagors.
227.535 Maximum mortgage amounts—Individual Mortgage.
227.540 Mortgagor minimum investment.
227.545 Maximum term.
227.550 Amortization period.
227.555 Release from Multifamily Sales Project mortgage.

Subpart D—Contract Rights and Obligations—Individual Mortgages

227.751 Incorporation by reference—Individual Mortgages.

AUTHORITY: The provisions of this Part 227 issued under secs. 807, 810, 69 Stat. 651, 73 Stat. 683; 12 U.S.C. 1748f, 1748h-2.

Subpart A—Eligibility Requirements—Projects

§ 227.1 Incorporation by reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Multifamily, sales or rental projects.* (1) All of the provisions of Subpart A, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales or Rental Project mortgages insured under this subpart except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.10 Covenant for fire insurance.
207.11 Soundness of project.
207.14 Prepayment privilege; prepayment and late charges.
207.17 Classification.
207.22 Qualification of lenders.
207.23 Eligibility of property.
207.25 Certificate of cost requirements.
207.26 Form of contract.
207.27 Certificates of actual cost.
207.28 Adjustment resulting from cost certification.
207.29 Rehabilitation projects.
207.30 Requisites of agreement and certification.
207.31 Eligibility of miscellaneous type mortgages.
207.31a Eligibility of housing in declining urban areas.
207.32 Eligibility of refinanced mortgages.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.
207.34 Reinsurance of Commissioner-held mortgages.

(2) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the National Housing Act shall be construed to refer to section 810 of such Act.

§ 227.5 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

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

(f) "Mortgagor" means any individual or private entity approved by the Commissioner, which until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, is regulated or restricted by the Commissioner as to rents or sales, charges, capital structure, rate of return, and methods of operation.

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

(h) "Multifamily Sales Project" means a project constructed under a blanket mortgage, covering a group of not less than eight single-family dwellings constructed for eventual sale to individual purchasers.

(i) "Multifamily Rental Project" means a project constructed for the purpose of providing rental housing accommodations for eligible tenants.

(j) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 227.10 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by a mortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services.

(d) Essential personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration or the

Atomic Energy Commission or employees of a contractor of such Administration or Commission who are employed at a research or development installation.

§ 227.15 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance by the Commissioner without regard to any requirement that the property or project be economically sound.

§ 227.20 Reduced mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 227.751 for individual mortgages.

§ 227.25 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* 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.

§ 227.27 Prepayment privilege; prepayment and late charge.

All of the provisions of § 207.14 of this chapter relating to prepayment and late charge shall apply to mortgages insured under this part, except that no prepayment charge shall be made for prepayments which result from releases of individual properties from a blanket mortgage covering a Multifamily Sales Project.

§ 227.30 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 227.35 Maximum mortgage amounts—Multifamily Rental Project.

A mortgage on a Multifamily Rental Project may involve a principal obligation not in excess of the lesser of the following:

(a) $5,000,000;

(b) 90 percent of the estimated value;

(c) For such part of the property or project attributable to dwelling use, an amount per family unit, depending on the number of bedrooms, which may be:

(1) $9,000 without a bedroom.

(2) $12,500 with one bedroom.

(3) $15,000 with two bedrooms.

(4) $18,500 with three or more bedrooms.

§ 227.40 Maximum mortgage amounts—multifamily sales project.

A mortgage on a multifamily sales project may involve a principal obligation not in excess of the lesser of the following:

(a) $5,000,000.

(b) A sum computed on the basis of a separate mortgage for each single-family dwelling comprising the project, equal to the total of each of the maximum principal obligations of such mortgages which would meet the requirements of section 203(b)(2) of the Act if the mortgagor were the owner and occupant who had made any required payment on account of the property described in such section of the Act; provided that special escrow arrangements, satisfactory to the Commissioner, are made by the mortgagor with respect to mortgage proceeds in excess of 90 percent of the estimated value.

§ 227.45 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent the dollar amount limitations set forth in § 227.35(c).

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed, in any event, the maximum including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 227.47 Loans to cover 2-year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 of this chapter on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 227.50 Mortgage release provisions.

A mortgage executed by a mortgagor of a Multifamily Sales Project shall provide that at any time after five years from the date the project became available for initial occupancy or at such earlier date as the Commissioner may authorize, the property underlying such mortgage may be released, in whole or in part, upon payment of the unpaid balance of the blanket mortgage allocable to the property released. Where the mortgage does not contain release provisions, no property shall, except with the consent of the Commissioner, be released from the lien thereof so long as the mortgage insurance is in force.

§ 227.55 Cost certification.

All of the provisions of §§ 207.25 through 207.30 of this chapter shall be applicable to a Multifamily Rental Project, but such provisions shall not be applicable to a Multifamily Sales Project.

Subpart B—Contract Rights and Obligations—Projects

§ 227.251 Incorporation by reference—Multifamily, Sales or Rental Project.

(a) All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to Multifamily, Sales or Rental Project mortgages insured under section 810 of the National Housing Act except the following provisions:

Sec.
207.253 Adjusted premium and termination charges.

(b) For the purposes of this part, all references in Part 207 of this chapter to section 207 of the act shall be construed to refer to section 810 of the act.

§ 227.253 Adjusted premium and termination charges.

All of the provisions of § 207.253 of this chapter relating to adjusted premium and termination charges shall apply to mortgages insured under this part, except that no adjusted premium charge shall be due the Commissioner where a Multifamily Sales Project Mortgage is paid in full prior to maturity as a result of the release of the individual properties from the mortgage.

Subpart C—Eligibility Requirements—Individual Mortgages

§ 227.501 Incorporation by reference.

(a) *General.* All of the provisions of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter shall govern the eligibility qualifications and requirements of mortgages under this subpart.

(b) *Individual Mortgages.* (1) All of the provisions of Subpart A, Part 203 of this chapter covering mortgages insured

under section 203 of the National Housing Act apply to Individual Mortgages insured under this subpart except the following provisions:

Sec.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.29 Eligible mortgages in Alaska, Guam or Hawaii.
203.40 Location of property.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.43a Eligibility of housing in declining urban areas.
203.50 et seq. Insured home improvement loans.

(2) For the purposes of this subpart all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 810 of such Act.

§ 227.505 Definitions of terms as used in this subpart.

As used in this subpart, the following terms will have the meaning indicated:

(a) "Act" means the National Housing Act, as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) [Reserved]

(d) "Mortgage" means a first mortgage on real estate, in fee simple, or on a leasehold (1) under a lease for not less than 99 years which is renewable; or (2) under a lease having a period of not less than 75 years to run from the date the mortgage is executed; or (3) under a lease executed by a governmental agency for the maximum term consistent with its legal authority, provided such lease has a period of not less than 50 years to run from the date the mortgage is executed; and the term "first mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(e) "Insured mortgage" means a mortgage which has been insured by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument by the Commissioner.

(f) "Mortgagor" in the case of an Individual Mortgage means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

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

(h) "Individual Mortgage" means a mortgage covering an individual single-family dwelling which has been released from a Multifamily Sales Project mortgage.

(i) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

§ 227.510 Preference in sale or rental.

Priority in the sale or rental of dwellings covered by a mortgage insured under this subpart shall be given to the following classes of persons:

(a) Military personnel;

(b) Essential civilian employees of the Armed Services;

(c) Employees of contractors for the Armed Services.

(d) Essential personnel employed or assigned to duty at a research or development installation of the National Aeronautics and Space Administration or the Atomic Energy Commission or employees of a contractor of such Administration or Commission who are employed at a research or development installation.

§ 227.515 Insurance risk and economic soundness.

Any mortgage may be accepted for insurance under this subpart by the Commissioner without regard to any requirement that the property or project be economically sound or an acceptable risk.

§ 227.520 Reduced mortgage amounts—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent. The mortgage amount shall be adjusted to the next lowest mortgage amount as stipulated in § 227.535 for individual mortgages.

§ 227.525 Eligible mortgages—form.

(a) *Form.* The mortgage must be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and must be a first lien upon property that conforms with property standards prescribed by the Commissioner.

(b) *Disbursement of mortgage proceeds.* 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.

§ 227.530 Eligible mortgagors.

In order to be eligible for mortgage insurance under this subpart, the mortgage shall be executed by a mortgagor approved by the Commissioner.

§ 227.535 Maximum mortgage amounts—Individual Mortgage.

The mortgage shall involve a principal obligation in an amount of $100 or multiples thereof except a mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25, 30 or 35 years may be in an amount of $50 or multiples thereof and must not exceed the unpaid balance of the project mortgage allocable to the property offered as security.

§ 227.540 Mortgagor minimum investment.

At the time the mortgage is insured the mortgagor shall have paid on account of the property at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine, in cash or its equivalent.

§ 227.545 Maximum term.

The mortgage shall come due on the first of a month and must have a maturity satisfactory to the Commissioner, not more than 35 years or the unexpired term of the Multifamily Sales Project mortgage at the time of release of the mortgaged property from such property mortgage.

§ 227.550 Amortization period.

The amortization period shall be either 10, 15, 20, 25, 30 or 35 years by providing for 120, 180, 240, 300, 360 or 420 monthly amortization payments.

§ 227.555 Release from Multifamily Sales Project mortgage.

To be released from the lien of a project mortgage the property to be released and mortgaged shall be included as part of a Multifamily Sales Project and shall have located thereon a single-family dwelling. The mortgage shall be executed in connection with the release of such property from the lien of the project mortgage and to replace or refinance the project mortgage as to such property.

Subpart D—Contract Rights and Obligations—Individual Mortgages

§ 227.751 Incorporation by reference—Individual Mortgages.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to Individual Mortgages insured under section 810 of the National Housing Act except the following provisions:

Sec.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund Income or Loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.440 et seq. Insured home improvement loans.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 810 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

PART 228—INDIVIDUAL RESIDENCES; NATIONAL DEFENSE HOUSING MORTGAGE INSURANCE [SEC. 903]

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

Sec.
228.251 Incorporation by reference.
228.255 Due date of initial MIP.
228.260 Adjustment of initial MIP.
228.265 Amount of annual MIP.
228.270 Pro rata adjustment of MIP upon prepayment.
228.275 Payment of delinquent interest.
228.280 Special forbearance relief—ownership of ten unit project.
228.285 Effect of special forbearance agreement on default and MIP.
228.290 Insurance benefits—conveyed properties—foreclosure costs.
228.295 Debenture interest rate.
228.300 Maturity of debentures.
228.305 Applicability to outstanding mortgages and commitments.

AUTHORITY: The provisions of this Part 228 issued under sec. 903, 65 Stat. 296, sec. 907, 65 Stat. 301; 12 U.S.C. 1750b, 1750f.

Subpart A—[Reserved]

Subpart B—Contract Rights and Obligations

§ 228.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages covering individual homes in connection with national defense housing insurance under section 903 of the National Housing Act, except the following:

Sec.
203.266 Due date of initial MIP.
203.268 Adjustment of initial MIP.
203.269 Pro rata payment of initial MIP.
203.275 Amount of annual MIP.
203.276 Due date of annual MIP.
203.278 Pro rata payment of annual MIP.
203.402 Items included in payment—conveyed properties.
203.405 Debenture interest rate.
203.406 Maturity of debentures.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.498 Applicability to outstanding mortgages and commitments.
203.499 Effective date.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the act shall be construed to refer to section 903 of the act, and all references to the Mutual Mortgage Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 228.255 Due date of initial MIP.

The initial MIP shall be paid on the date on which the insurance becomes effective by endorsement.

§ 228.260 Adjustment of initial MIP.

Regardless of whether the period covered by the MIP is more or less than 1 year, a payment shall be made to the Commissioner on account of the initial MIP which payment shall be in an amount equal to one-half percent of the average outstanding principal obligation for the first year of amortization under the mortgage. If such payment is less than the minimum premium or more than the maximum premium prescribed by the act, the initial MIP shall be in such minimum amount and the amount of the second premium shall be adjusted accordingly. If such payment is within the limitations prescribed by the act, no adjustment shall be made and the amount of the payment shall be retained by the Commissioner as the initial MIP.

§ 228.265 Amount of annual MIP.

After payment of the initial MIP and until the mortgage is paid in full or until an application for insurance benefits is received by the Commissioner or until the contract is otherwise terminated with the consent of the Commissioner, the mortgagee shall continue to pay annual MIP to the Commissioner. Annual MIP shall be paid on the anniversary date of the beginning of amortization. It shall be paid in an amount equal to one-half percent of the average outstanding principal obligation for the 12-month period following the date on which the premium becomes payable.

§ 228.270 Pro rata adjustment of MIP upon prepayment.

Upon prepayment of the mortgage in full prior to maturity, the Commissioner shall refund to the mortgagee for the account of the mortgagor an amount equal to the pro rata portion of the current MIP theretofore paid which is applicable to the portion of the year subsequent to such payment, computed from the first day of the month following the month in which such prepayment occurs. No such refund shall be made in any case where the prepayment occurs in the twelfth month of the premium year.

§ 228.275 Payment of delinquent interest.

The mortgagee may, with the written consent of the Commissioner, apply partial payments to delinquent interest to the exclusion of prior delinquent principal payments at a rate not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled. Where the partial payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment any part of which remains unpaid.

§ 228.280 Special forbearance relief—ownership of ten unit project.

The Commissioners may consent to the mortgagee entering into a written agreement with the mortgagor providing for a postponement for a period not to exceed 1 year of that part of the monthly payment which represents amortization of principal where the mortgagor is the owner of a group of properties consisting of a project of not less than 10 rental units. Such agreement shall obligate the mortgagor to deposit with the mortgagee the entire net income from all of the properties comprising the project, under arrangements satisfactory to the Commissioner. The agreement shall also obligate the mortgagor to resume monthly payments after the effective period of the agreement in such amounts as will completely amortize the mortgage indebtedness within the original maturity. The agreement shall in no way affect the amount of the annual MIP which shall continue to be calculated in accordance with the original amortization provisions.

§ 228.285 Effect of special forbearance agreement on default and MIP.

If the mortgagee withholds foreclosure proceedings against the mortgagor pursuant to the provisions of a forbearance agreement approved by the Commissioner, partial payments on the mortgage received by the mortgagee shall be applied and reapplied in the manner prescribed in such agreement. Where payments are so applied, the date of default shall be 30 days after the due date of the earliest monthly payment, any part of which remains unpaid. In such instances, the Commissioner may not require the payment of MIP or any portion thereof to the extent that partial payments received from the mortgagor during the period of forbearance are insufficient to pay such premiums after applying the partial payments to delinquent interest. The rate of delinquent interest shall be not in excess of the interest rate applicable to debentures to which the mortgagee may be entitled.

§ 228.290 Insurance benefits—conveyed properties—foreclosure costs.

All of the provisions of § 203.402 of this chapter shall govern the computation of the items included in insurance benefits for conveyed properties, except that in lieu of the allowance in paragraph (f) of § 203.402 of this chapter for foreclosure costs or for the costs of acquiring the property otherwise, there shall be included on account of such costs, in those cases involving mortgages on which the unpaid principal obligation at the time of the institution of foreclosure exceeds 80 percent of the appraised value of the property as of the date the mortgage was accepted for insurance, an amount not in excess of the greater of the following:

(a) Two percent of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but not in excess of $75; or

(b) Two-thirds of the foreclosure costs or the costs of acquiring the property otherwise.

§ 228.295 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually

on the first day of January and the first day of July of each year at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance prior to July 8, 1953, and at the rate of 2¾ percent per annum in the case of mortgages endorsed for insurance on or after July 8, 1953 and pursuant to commitments issued prior to May 29, 1954, and at the rate of 2½ percent per annum in the case of mortgages endorsed for insurance after May 29, 1954, and pursuant to commitments issued prior to August 9, 1954, and at the rate in effect as of the date the commitment was issued or as of the date the mortgage was endorsed for insurance in the case of mortgages committed or endorsed for insurance on or after August 9, 1954. The following additional interest rates are effective for the dates listed:

Effective rate (percent)	On or after—	Prior to—
2½	Aug. 9, 1954	Jan. 1, 1955
2⅝	Jan. 1, 1955	July 1, 1955
2¾	July 1, 1955	July 1, 1956
3	July 1, 1956	Jan. 1, 1957
3¼	Jan. 1, 1957	July 1, 1957
3½	July 1, 1957	

§ 228.300 Maturity of debentures.

Debentures shall mature as follows:

(a) Where the mortgage was insured pursuant to a commitment issued prior to August 9, 1954, the debentures shall mature 10 years after the date of issue of such debentures.

(b) Where the mortgage was insured pursuant to a commitment issued on or after August 9, 1954, the debentures shall mature 20 years after the date of issue of such debentures.

§ 228.305 Applicability to outstanding mortgages and commitments.

The regulations in this part are effective as to all mortgages on which a commitment to insure is issued to an approved mortgagee on or after August 11, 1954.

PART 229—NATIONAL DEFENSE RENTAL HOUSING MORTGAGE INSURANCE [SEC. 908]

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

Sec.
229.251 Incorporation by reference.
229.252 Effective date.

AUTHORITY: The provisions of this Part 229 issued under sec. 907, 65 Stat. 301; 12 U.S.C. 1750f, unless otherwise noted.

Subpart A—Eligibility Requirements [Reserved]

Subpart B—Contract Rights and Obligations

§ 229.251 Incorporation by reference.

All of the provisions of Subpart B, Part 207 of this chapter concerning rights and obligations of a mortgagee pursuant to an insurance contract under section 207 of the act apply to mortgages insured pursuant to section 908 of the act, except for the purposes of this part:

(a) References in Part 207 of this chapter to section 207 of the act shall be deemed to mean section 908 of the act.

(b) Debentures shall mature as follows:

(1) Where the mortgage was insured pursuant to a commitment issued prior to August 13, 1954, the debentures shall mature 10 years after the date of issue of such debentures.

(2) Where the mortgage was insured pursuant to a commitment issued on or after August 13, 1964, the debentures shall mature 20 years after the date of issue of such debentures.

(Interpret or apply sec. 908, 65 Stat. 301, as amended; 12 U.S.C. 1750g)

§ 229.252 Effective date.

The provisions of this part shall be effective as to all mortgages with respect to which a commitment to insure shall be issued on or after the date hereof.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

Subpart A—Eligibility Requirements

Sec.
231.1 Incorporation by reference.
231.2 Definitions.
231.3 Maximum mortgage amounts—new construction.
231.4 Maximum mortgage amounts—rehabilitation projects.
231.5 Increased mortgage amounts—elevator type structures.
231.6 Increased mortgage amounts—high cost areas.
231.7 Loans to cover two year operating loss.
231.8 Supervision of mortgagors.
231.9 Eligible occupants.
231.10 Development of property.
231.10a Certificate of cost requirements.
231.10b Form of contract.
231.11 Certificates of actual cost.
231.11a Builder's and sponsor's profit and risk allowance.
231.11b Contractor's certification.
231.12 Private mortgagor—nonprofit; prepayment privilege and prepayment charges.
231.13 Private mortgagor—profit prepayment privileges and prepayment charges.
231.14 Late charge.

Subpart B—Contract Rights and Obligations

231.251 Incorporation by reference.

AUTHORITY: The provisions of this Part 231 issued under sec. 211, 52 Stat. 23; as amended, sec. 231, 73 Stat. 665; 12 U.S.C. 1715b, 1715v.

Subpart A—Eligibility Requirements

§ 231.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to mortgages on projects for the elderly insured under section 231 of the National Housing Act except the following provisions:

Sec.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.14 Prepayment privilege; prepayment and late charges.
207.17 Classification.
207.19 Required supervision of private Mortgagors.
207.20 Occupancy requirements.
207.24 Development of property.
207.25 Certificate of cost requirements.
207.26 Form of contract.
207.27 Certificates of actual cost.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

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

§ 231.2 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) [Reserved]

(b) "Act" means the National Housing Act, as amended.

(c) "Elderly person" means any person married or single, 62 years of age or more.

(d) "Housing for the elderly" means eight or more new or rehabilitated living units which are specially designed for the use and occupancy of elderly persons.

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

(f) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with the periodic payments provided for in the mortgage.

(h) "Replacement cost" means the Commissioner's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(i) "Private Mortgagor—Profit" means any mortgagor approved by the Commissioner, which, until the termination of all obligations of the Commissioner under the insurance contract and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, may in the Comissioner's discretion be regulated or restricted as to rents or sales, charges, capital structure, rate of return and methods of operation.

(j) "Private Mortgagor—Nonprofit" means a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is in no manner controlled by nor under the direction of persons or firms seeking to derive profit

or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of states or agencies thereof, or the Federal Housing Commissioner, as to rents, charges, and methods of operation. The regulation or supervision of the mortgagor shall be in such manner as, in the opinion of the Commissioner, will effectuate the purposes of this subpart.

(k) "Public Mortgagor" means a Federal or State instrumentality, a municipal corporate instrumentality of one or more States, or nonprofit development or housing corporation restricted by Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation.

(l) "Handicapped person" means a person who has a physical impairment which:

(1) Is expected to be of a long-continued and indefinite duration;

(2) Substantially impedes his ability to live independently; and

(3) Is of such nature that his ability to live independently could be improved by more suitable housing conditions.

§ 231.3 Maximum mortgage amounts—new construction.

The mortgage shall involve a principal obligation not in excess of the following:

(a) *Dollar amount limitation.* (1) $12,500,000 if executed by a Private Mortgagor;

(2) $50,000,000 if executed by a Public Mortgagor.

(b) *Family unit limitations.* For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $8,800 without a bedroom.

(2) $12,375 with one bedroom.

(3) $14,850 with two bedrooms.

(4) $18,700 with three bedrooms.

(5) $21,175 with four or more bedrooms.

(c) *Replacement cost limitation.* (1) The Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Nonprofit or a Public Mortgagor. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner.

(2) 90 percent of the Commissioner's estimate of the replacement cost of the property or project when the proposed improvements are completed if executed by a Private Mortgagor—Profit. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and other miscellaneous charges incident to construction and approved by the Commissioner and shall include an allowance for builders and sponsors profit and risk of 10 percent of the foregoing items exclusive of land unless the Commissioner, after certifying such allowance is unreasonable, prescribes a lesser percentage.

(d) *Reduced mortgage amount — leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 231.4 Maximum mortgage amounts—rehabilitation projects.

(a) *Principal obligation of mortgage.* In the case of properties other than new construction, the principal obligation of the mortgage shall not exceed:

(1) *Public Mortgagor and Private Mortgagor—Nonprofit.* For a Public Mortgagor and a Private Mortgagor—Nonprofit, the Commissioner's estimate of the value of the project after the completion of the rehabilitation;

(2) *Private Mortgagor—Profit.* For a Private Mortgagor—Profit, 90 percent of the Commissioner's estimate of the value of the project after the completion of the rehabilitation.

(b) *Adjusted mortgage amount—rehabilitation projects.* A mortgage having a principal amount computed in compliance with the applicable provisions of this section, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(1) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor, the Commissioner's estimate of the cost of repair or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90% of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(3) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed:

(i) *Nonprofit mortgagor.* If the mortgagor is a nonprofit mortgagor, the Commissioner's estimate of the cost of the proposed repair or rehabilitation plus the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(ii) *Profit mortgagor.* If the mortgagor is a profit mortgagor:

(*a*) 90% of the Commissioner's estimate of the cost of the repair or rehabilitation, plus

(*b*) 90% of the actual purchase price of the land and improvements, or Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation, whichever is the lesser as provided in this (*b*).

(c) *Reduced mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 231.5 Increased mortgage amounts—elevator type structures.

In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in § 231.3(b) to not to exceed:

(a) $10,450 per family unit without a bedroom.

(b) $14,850 per family unit with one bedroom.

(c) $17,600 per family unit with two bedrooms.

(d) $22,000 per family unit with three bedrooms.

(e) $25,025 per family unit with four or more bedrooms.

§ 231.6 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 45 percent, the dollar amount limitations set forth in §§ 231.3 (b) and 231.5.

(b) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 231.7 Loans to cover two year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that

an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 231.2 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 231.8 Supervision of mortgagors.

(a) *Private Mortgagor—Profit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor—Profit.

(b) *Private Mortgagor—Nonprofit.* All of the provisions of § 207.19 of this chapter apply to mortgages executed by a Private Mortgagor—nonprofit except that:

(1) A private mortgagor—nonprofit shall not be subject to the provisions of § 207.19(b) of this chapter (rate of return); § 207.19(c)(1) of this chapter (the requirement of a deposit, in cases involving the insurance of advances, to meet the cost of equipping and renting the project subsequent to construction and to provide for accruals to meet payment of taxes, ground rents, mortgage insurance premiums, property insurance premiums and assessments); § 207.19(e) of this chapter (rents and charges); § 207.19(g) of this chapter (mortgagor's equity investment); and § 207.19(h) of this chapter (advance amortization).

(2) In connection with a Private Mortgagor—Nonprofit the provisions of § 207.19(d) of this chapter (Labor standards and prevailing wage requirements), may be waived in those cases where laborers or mechanics not otherwise employed at any time on the project voluntarily donate their services without full compensation for the purpose of lowering construction costs and the Commissioner determines that amounts thus saved are fully credited to the Private Mortgagor—Nonprofit. No charge shall be made by a Private Mortgagor—Nonprofit for accommodations, facilities or services offered by the project except those charges approved by the Commissioner.

§ 231.9 Eligible occupants.

The mortgagor shall establish that preference or priority of opportunity to rent the dwelling units covered by the mortgage will be given to elderly persons and to handicapped persons.

§ 231.10 Development of property.

(a) *Commercial and special facilities.* The project may include such commercial and special facilities as the Commissioner deems adequate to serve the occupants of the project.

(b) *Zoning, deed or building restrictions.* The project when constructed or rehabilitated shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental requirements.

§ 231.10a Certificate of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers. It shall also agree:

(1) To enter into a construction contract in a form meeting the requirements of § 231.10b.

(2) To execute a certificate of actual cost upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over:

(i) In the case of a private mortgagor—profit, 90 percent of actual cost.

(ii) In the case of a public mortgagor and private mortgagor—nonprofit, 100 percent of actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 231.10b Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a private mortgagor—profit or a public mortgagor.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a private mortgagor—nonprofit, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 231.11 Certificates of actual cost.

(a) *Mortgagor's certificate.*—(1) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the Commissioner.

(2) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(i) The cost plus construction contract, including the builder's fee actually paid and approved by the Commissioner; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(ii) The architect's fee.

(iii) The offsite public utilities and streets not included in subdivision (i) of this subparagraph.

(iv) The organizational and legal expenses.

(v) The other items of expense approved by the Commissioner.

(3) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders or partners. Any such payments shall be deducted from the costs determined under subparagraph (2) of this paragraph.

(b) *Records.* The mortgagor shall keep and maintain adequate records of all cost of any construction or other cost items not representing work under the general contract and, in the case of a cost plus contract, shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

(c) *Certificate of public accountant.* The certificate of actual cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

§ 231.11a Builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit mortgagor) an allowance for builder's and sponsor's profit and risk, the amount of

which shall be dependent upon a determination by the Commissioner as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 231.11(a)(2)(i). This allowance shall be 10 percent of the actual cost computed in accordance with § 231.11(a) excluding the following items:

(1) Any builder's fee actually paid and approved by the Commissioner. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost computed in accordance with § 231.11(a) excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

(d) *Nonapplicability to nonprofit mortgagor.* The provisions of paragraphs (a) through (c) of this section shall not be applicable to a project involving a nonprofit mortgagor.

§ 231.11b Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the Commissioner to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 231.12 Private mortgagor—nonprofit; prepayment privilege and prepayment charges.

In the case of a private mortgagor-nonprofit:

(a) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent is obtained and upon such terms and conditions as the Commissioner may prescribe.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to maturity, and with the approval of the Commissioner, partial prepayments may be made, after thirty days' written notice to the mortgagee, on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the note, a reasonable charge on such excess may be allowed as agreed upon between the mortgagor and the mortgagee, except that no charge may be made where the prepayment is made by a guarantor pursuant to a guaranty agreement.

§ 231.13 Private mortgagor—profit prepayment privileges and prepayment charges.

In the case of a private mortgagor-profit:

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

§ 231.14 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Subpart B—Contract Rights and Obligations

§ 231.251 Incorporation by reference.

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

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

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

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AUTHORITY: The provisions of this Part 232 issued under sec. 211, 52 Stat. 23, as amended, sec. 232, 73 Stat. 663; 12 U.S.C. 1715b, 1715w.

Subpart A—Eligibility Requirements

DEFINITIONS

§ 232.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgagee" means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named. The mortgagee shall meet the eligibility qualifications and requirements of §§ 203.1 to 203.4 and 203.6 to 203.9 of this chapter.

(d) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(e) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby.

(f) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(g) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(h) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(i) "Nursing home" means a proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(j) "Project" means a nursing home or intermediate care facility or combined nursing home and intermediate care facility which has been approved by the Commissioner under the provisions of this subpart.

(k) "Intermediate care facility" means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services.

APPLICATION AND CERTIFICATION

§ 232.5 Application.

An application for the issuance of either a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless accompanied by the exhibits called for by the form.

§ 232.6 Required certificates.

(a) *Certification by State agency.* Every application for insurance shall be accompanied by a certificate executed by a State agency for the State in which the project is or will be located, designated in accordance with section 612(a)(1) of the Public Health Service Act. Such certificate shall evidence that:

(1) There is need for the project.

(2) There are in force in the State or other political subdivision of the State in which the proposed project will be located reasonable minimum standards of licensure and methods of operation for the project.

(b) *Enforcement of State standards.* No mortgage shall be insured under this subpart unless the Commissioner has been furnished with acceptable assurance from the appropriate State agency that the prescribed standards of licensure and operation will be applied and enforced with respect to any project for which mortgage insurance is provided.

FEES AND CHARGES

§ 232.10 Application for conditional commitment.

An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall acompany the application for a conditional commitment.

§ 232.11 Application for firm commitment.

An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the mortgage applied for, is such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the mortgage applied for, shall also be submitetd with the application for a firm commitment. The payment of a commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or constructed pursuant to the Atomic Energy Community Act of 1955, as provided in § 207.31(b)(4) of this chapter.

§ 232.12 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

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

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

§ 232.13 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

(c) *Loan to cover operating losses.* In connection with a loan to cover operating losses occurring during the first 2 years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan aplied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(d) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 232.13a Transfer fee.

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

§ 232.14 Refund of fees.

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

§ 232.15 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage, to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

ELIGIBLE MORTGAGORS

§ 232.20 Eligible mortgagors.

All mortgagors shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating the project, unless a mortgagor leases the property or project to a qualified operator, in which case the lessee shall be approved by the Commissioner and shall possess the legal powers necessary and incidental to operating the project.

ELIGIBLE MORTGAGES

§ 232.25 Mortgage forms.

(a) *Approval of forms.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction where the project is located.

(b) *Changes in form.* No changes in the approved form shall be made without the prior written approval of the Commissioner.

§ 232.25a Eligibility of property.

A mortgage to be eligible for insurance shall be on real estate held:

(a) In fee simple; or

(b) On the interest of the lessee under a lease for not less than ninety-nine years which is renewable; or

(c) Under a lease having a period of not less than fifty-five years to run from the date the mortgage is executed.

§ 232.26 Mortgage lien.

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

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

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

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

§ 232.27 Maximum mortgage maturity.

The mortgage shall have a maturity not to exceed 20 years from the beginning of amortization and shall contain amortization or sinking-fund provisions satisfactory to the Commissioner.

§ 232.28 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for payments on the first day of each month on account of interest and principal in accordance with an amortization plan as agreed upon by the mortgagor, the mortgagee and the Commissioner.

(b) *Date of first payment to principal.* The Commissioner shall estimate the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortizaton will not be longer than necessary to obtain a sustaining level of operation.

§ 232.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 232.30 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(a) *Dollar amount limitation.* $12,500,000; or

(b) *Loan-to-value limitation.* 90 percent of the Commissioner's estimate of the value of the property or project, including equipment to be used in its operation, when the proposed improvements are completed and the equipment is installed.

§ 232.31 Increased mortgage amounts.

If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct a project without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this part, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 232.31a Loans to cover two year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 232.29 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 232.32 Adjusted mortgage amount—rehabilitation projects.

In addition to the limitations of § 237.30, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation; or

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed: (1) The Commissioner's estimate of the cost of the repair or rehabilitation; plus (2) such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation; or

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of: (1) The Commissioner's estimate of the cost of the repair or rehabilitation, and (2) the actual purchase price of the land and improvements, but not in excess of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

§ 232.33 Reduced mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 232.34 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither it, nor anyone authorized to act for it, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specificially disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 232.35 Accumulation of next premium.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such ground rents, taxes, water rates and assessments, and insurance premiums, before the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 232.36 Application of payments.

(a) The mortgage shall provide that all monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgagee shall apply the same to the following items in the order set forth:

(1) Premium charges under the contract of insurance;

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

(3) Interest on the mortgage;

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of any such aggregate monthly payment shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be made good.

§ 232.37 Prepayment privilege and prepayment charges.

(a) *Proprietary facilities.* In the case of a mortgagor operating a proprietary facility, the following provisions shall be applicable:

(1) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving to the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(2) *Prepayment charge.* The mortgage may contain a provision for such additional charge in the event of prepayment of principal as may be agreed upon between the mortgagor and the mortgagee. The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any 1 calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements of this part shall not be construed as a prepayment of the mortgage.

(b) *Nonprofit facility.* In the case of a facility operated by a nonprofit corporation or association, the following provisions shall be applicable:

(1) *Prepayment in full.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior consent in obtained as he may prescribe.

(2) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(3) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that prior to maturity and with the approval of the Commissioner partial prepayments may be made after 30 days' written notice to the mortgagee on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the note, a reasonable charge on such excess may be allowed as agreed upon between the mortgagor and the mortgagee.

§ 232.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 232.39 Construction standards—minimum number of beds.

The project shall conform to standards satisfactory to the Commissioner and consist of not less than 20 beds after completion of the construction or rehabilitation.

§ 232.40 Zoning, deed or building restrictions.

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

§ 232.41 Eligibility of miscellaneous type mortgages.

A mortgage meeting the requirements of § 207.31 of this chapter, as well as the requirements of this subpart, shall be eligible for insurance under this subpart.

§ 232.41a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, or construction 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 (other than those relating to labor standards and prevailing wages) 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 an adequate nursing home or intermediate care facility for persons of low and moderate income.

(3) That under all of the special surrounding circumstances, 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.

§ 232.42 Eligibility of refinanced mortgages.

A mortgage meeting the requirements of § 207.32 of this chapter, as well as the requirements of this subpart, shall be eligible for insurance under this subpart.

§ 232.43 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) The Trustee shall be the holder of record of the insured mortgage (represented by the trust indenture) and shall be authorized to act on behalf of the holders of such bonds or other obligations in all matters concerning the mortgage insurance contract; and

(c) The holders of the bonds shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under such contract to the Trustee, without liability or accountability to the bondholders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgage approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds or other obligations; or

(3) A charitable or nonprofit organization.

SUPERVISION OF MORTGAGORS

§ 232.45 Supervision by Commissioner.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

COMMITMENT

§ 232.50 Commitment to insure.

(a) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(b) *Insurance of advances or upon completion.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for insurance of the mortgage after completion of the improvements.

(c) *Term of commitment.* (1) If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(i) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(ii) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(2) The term of a commitment may be extended in such manner as the Commissioner may, from time to time, prescribe.

(3) If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of a commitment, the commitment shall expire on the 30th day.

(d) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase,

the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

INSURANCE OF ADVANCES

§ 232.55 Building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 232.56 Assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

(1) Where the estimated cost of construction or rehabilitation is $500,000 or less, assurance will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners or individuals operating as the general contractor.

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction contract, the amount of which shall be prescribed by the Commissioner.

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

SPECIAL REQUIREMENTS

§ 232.60 Escrow for offsite utilities and streets.

(a) The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

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

§ 232.61 Equity requirements.

(a) *Funds and finances—in general.* The mortgagor shall establish to the Commissioner's satisfaction that, in addition to the proceeds of the insured mortgage, the mortgagor has adequate funds to meet the expenses of the project (including the cost of equipment and supplies not to be purchased with mortgage proceeds) for such period as the Commissioner estimates as necessary to establish a sustaining level of operation.

(b) *Funds and finances—insured advances.* If the commitment provides for insurance of advances during construction, in addition to meeting the requirements of paragraph (a) of this section, the mortgagor shall meet the following requirements:

(1) Where the mortgagor is other than a private nonprofit corporation or association, it shall deposit with the mortgagee prior to initial endorsement, an amount determined by the Commissioner to be sufficient to meet, during the course of construction, the payments to accruals required by the terms of the mortgage, for taxes, mortgage insurance premiums, hazard insurance premiums and assessments required by the terms of the mortgage.

(2) Prior to initial endorsement, the mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the creation of the project. Such funds shall be held by the mortgagee under an appropriate agreement approved by the Commissioner which will require all such funds to be disbursed for work and material on the physical improvements, and for other charges and expenses to be paid when due, prior to the advance of any mortgage money.

(3) All fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner, shall be deposited with the mortgagee in cash, prior to initial endorsement, unless other arrangements acceptable to the Commissioner are made.

(c) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraphs (a) and (b) of this section shall be deposited with and held by the mortgagee in a special account or by an acceptable depository designated by the mortgagee under an appropriate agreement approved by the Commissioner.

(d) *Letter of credit.* The mortgagee may accept, in lieu of a cash deposit required by paragraphs (a), (b)(1) and (b)(3), an unconditional irrevocable letter of credit issued to the mortgagee by a banking institution. In the event a demand under the letter of credit is not immediately met, the mortgagee shall forthwith provide cash equivalent to the undrawn balance thereunder.

§ 232.62 Advance amortization requirements.

(a) If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the operation of the project, such net income, to the extent determined by the Commissioner, shall be applied in one or more of the following ways:

(1) To advance amortization.

(2) To offset the cost of approved capital improvements.

(3) To be deposited in the reserve fund for replacement and to be held as a reserve in addition to the monthly deposits required by the regulatory agreement. In addition to being applicable to commitments issued on or after December 3, 1963, the provisions of this subparagraph shall be applicable to commitments outstanding on such date where the mortgage has not received final endorsement.

(b) The provisions of paragraph (a) of this section shall not be applicable to a mortgagor that is a private nonprofit corporation or association.

PREVAILING WAGE REQUIREMENTS

§ 232.70 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

§ 232.71 Ineligible contractors.

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

§ 232.72 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list, established by the Commissioner or by the Comptroller General pursuant to the provisions of the Regulations of the Secretary of Labor (29 CFR 5.6(b)).

§ 232.73 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a certificate as required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

§ 232.74 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

COST CERTIFICATION REQUIREMENTS

§ 232.80 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of mortgage proceeds over 90 percent of the actual cost of the project. Under this agreement the mortgagor shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors and suppliers;

(2) Enter into a construction contract in a form meeting the requirements of § 232.81;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of mortgage proceeds over 90 percent of the actual cost to reduction of the outstanding balance of the principal of the mortgage.

(b) The provisions of paragraphs (a) (1) and (2) of this section shall not apply where the mortgagor is the general contractor.

§ 232.81 Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, and may include a provision for an additional payment to the builder of a fee in an amount allowed by the Commissioner.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the Commissioner that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a mortgagor established to operate a proprietary project.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a mortgagor established to operate a private nonprofit project, unless it is established to the Commissioner's satisfaction that a cost plus form of contract is not required to protect his interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

(d) *Hill-Burton projects.* Where the mortgagor is to receive a Hill-Burton grant in connection with the development of the project, a lump sum contract may be used regardless of whether a cost plus form of contract would otherwise be required by the provisions of paragraph (c) of this section.

§ 232.82 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor, its officers, directors or stockholders have any interest, financial or otherwise, in any subcontractor or material supplier, the mortgagor shall certify in form prescribed by the Commissioner prior to final endorsement of the mortgage for insurance that the amounts paid to such subcontractor or material supplier were not more than the rate prevailing in the locality for similar type labor and materials.

§ 232.83 Lump sum contract—certification of actual cost.

The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, or partners, of:

(a) The construction contract, where the mortgagor and the general contractor are separate entities, or the construction of the project where the mortgagor is the general contractor and there is no such contract. In the case of a lump sum contract, the amount shown in the certificate shall include all payments under the contract;

(b) Architect's fee;

(c) Off-site public utilities and streets not included in the general contract;

(d) Organizational and legal work; and

(e) Other items of expense approved by the Commissioner.

§ 232.84 Fixed fee contract—additional certification.

When the work has been completed under a fixed fee contract or by a mortgagor who is also the general contractor, the mortgagor's certification shall also show:

(a) Such allocations of general overhead items as are acceptable to the Commissioner; and

(b) A reasonable allowance for the builder's profit as established by the Commissioner.

§ 232.85 Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used, the mortgagor shall submit along with its certification of actual cost a certification of the general contractor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the Commissioner that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners, and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontracts and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its

officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner, and it is determined by the Commissioner that an identity of interest exists between the general contractor and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 232.86 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records including any collateral agreements.

§ 232.87 Certificate of public accountant.

The certificates of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 232.88 Value of land.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, of acquiring the leasehold or other interest shall be considered an allowable expense which may be added to actual cost. In no event shall such cost be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 232.89 Reduction in mortgage amount.

If the principal obligation of the mortgage exceeds 90 percent of the total amount as shown by the certificate of actual cost plus the value of the land (the cost shown by the certificate of actual cost in rehabilitation cases), the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.90 Rehabilitation projects.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted by new construction in accordance with this part and the applicable cost certification procedure described therein will be required; provided such mortgage shall be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the Commissioner, the amount of the existing mortgage or 90 percent of the Commissioner's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess, prior to final endorsement for insurance.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price or the Commissioner's estimate of the fair market value of land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the applicable 90 percent of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess prior to final endorsement for insurance.

§ 232.90a Reinsurance of Commissioner-held mortgages.

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

§ 232.91 Effects of agreement.

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

§ 232.92 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

TITLE

§ 232.93 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 232.94 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b), (c), or (d) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

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

(c) A Torrens or similar title certificate.

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

EXTENSION OF TIME

§ 232.96 Actions by Commissioner.

Where the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

§ 232.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

§ 232.251 Incorporation by reference.

(a) All of the provisions of Part 207, Subpart B of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages on projects insured under section 232 of such Act.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to section 232 of the Act.

§ 232.252 Definitions.

All of the definitions contained in 232.1 shall apply to this subpart. In addition, as used in this part, the following term shall have the meaning indicated:

(a) "Contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Homes

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233.751 Incorporation by reference.
233.760 Payment of insurance benefits.

Subpart F—Assistance and Interest Reduction Payments

233.900 Incorporation by reference.

AUTHORITY: The provisions of this Part 233 issued under sec. 211, 52 Stat. 23, as amended; sec. 233, 75 Stat. 158, as amended; 12 U.S.C. 1715b, 1715z.

Subpart A—Eligibility Requirements—Homes

§ 233.1 Scope of subpart.

Mortgages and loans financing construction or rehabilitation of one- to four-family dwellings (or one- to eleven-family dwellings in the case of mortgages or loans meeting the requirements of section 220 of the Act) and which involve the utilization and testing of advanced technology in housing design, material or construction or experimental property standards for neighborhood design, may be insured under section 233 of the Act. To be eligible, a mortgage or loan shall also meet the requirements of the applicable home mortgage or home improvement loan program under section 203, 213, 220, 221 or 234 of the Act.

§ 233.5 Incorporation by reference.

(a) To be eligible for insurance under this subpart, a mortgage or home improvement loan shall meet the eligibility requirements for insurance under § 203.1 et seq. (Part 203, Subpart A); § 213.501 et seq. (Part 213, Subpart C); § 220.1 et seq. (Part 220, Subpart A); § 221.1 et seq. (Part 221, Subpart A); § 234.1 et seq. (Part 234, Subpart A); § 235.1 et seq. (Part 235, Subpart A); § 237.1 et seq. (Part 237, Subpart A); or § 809.1 et seq. (Part 809, Subpart A) of this chapter, except that:

(1) The prescribed tests of economic soundness or acceptable risk shall not be applicable.

(2) In lieu of establishing mortgage limits upon the basis of a percentage of the Commissioner's estimate of appraised value, or replacement cost, or cost of repair and rehabilitation, as required by the applicable section under which the mortgage or loan would otherwise be eligible, the mortgage limits shall be determined by applying the percentage prescribed by the pertinent section to the following:

(i) In cases involving new construction, such percentage shall be applied to the Commissioner's estimate of the cost of replacing the property using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(ii) In cases involving repair and rehabilitation, such percentage shall be applied to the sum of:

(*a*) The Commissioner's estimate of the value of the property before repair and rehabilitation; plus

(*b*) The lesser of either the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards.

(3) The limitations upon maximum mortgage amount in a case involving a nonoccupant owner shall not be applicable.

(4) In cases involving home improvement loans, instead of establishing mortgage limits upon the basis of the Commissioner's estimate of the cost of such improvements, the limits shall be determined on the basis of the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(b) For the purposes of this subpart, all references in Parts 203, 213, 220, 221, 234, 235, 237, and 809 of this chapter to sections 203, 213, 220, 221, 234, 235, 237, and 809 of the National Housing Act shall be construed to refer to section 233 of the Act.

§ 233.15 Eligible property requirements.

To be eligible for insurance:

(a) The mortgage or home improvement loan shall relate to property involving the utilization and testing of advanced technology in housing design, material, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing technology or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

(c) The dwelling shall be approved for insurance by the Commissioner prior to the beginning of construction or repair, rehabilitation or improvement.

§ 233.30 Agreements, covenants and easements.

Prior to insurance, the mortgagor or borrower shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to permit the Commissioner to make inspections and technical observations of the experimental features of the project.

Subpart B—Contract Rights and Obligations—Homes

§ 233.251 Incorporation by reference.

(a) Mortgages and home improvement loans insured under the experimental home mortgage insurance program shall be governed by the provisions of the regulations covering contract rights and obligations, as they respectively relate to the several mortgage or home improvement loan programs set forth in § 233.1 of this part, except that provisions of the foregoing regulations concerning mutuality of an insurance fund shall not apply.

(b) For the purpose of this subpart, all of the references in § 203.251 et seq. (Part 203, Subpart B); § 213.751 et seq. (Part 213, Subpart D); § 220.251 et seq. (Part 220, Subpart B); § 221.251 et seq. (Part 221, Subpart B); § 234.251 et seq. (Part 234, Subpart B); § 235.201 et seq. (Part 235, Subpart B); § 237.201 et seq. (Part 237, Subpart B); or § 809.251 et seq. (Part 809, Subpart B) of this chapter to:

(1) Section 203, 213, 220, 221, 234, 235, 237, or 809 shall be construed to refer to section 233 of the Act; and

(2) The Mutual Mortgage Insurance Fund, the Cooperative Management Housing Insurance Fund, or the Special

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

§ 233.253. Application for insurance benefits and accompanying fiscal data.

(a) *Insured mortgages.* Where an insured mortgage is involved, the provisions of §§ 203.350 through 203.391 of this chapter govern the filing of an application for insurance benefits and the items to be filed with the application.

(b) *Insured home improvement loans.* Where an insured home improvement loan is involved, the provisions of § 203.476 of this chapter (relating to claim application and items to be filed) shall be applicable.

§ 233.275 Method of paying insurance benefits.

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

Subpart C—Assistance Payments

§ 233.401 Incorporation by reference.

(a) *Section 235 type home mortgages.* All of the provisions of Subpart C, Part 235, concerning assistance payments pursuant to section 235 of the Act, apply with full force and effect to a mortgage insured under Subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of § 235.1 et seq. (Part 235, Subpart A), except as such requirements are modified by § 233.5.

(b) *Section 237 type home mortgages.* All of the provisions of Subpart C, Part 237, concerning assistance payments in connection with a mortgage insured under section 237, apply with full force and effect to a mortgage insured under Subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of § 237.1 et seq. (Part 237, Subpart A), except as such requirements are modified by § 233.5.

Subpart D—Eligibility Requirements—Projects

§ 233.501 Scope of subpart.

Mortgages and loans financing construction or rehabilitation of multifamily projects which involve the utilization and testing of advanced technology in housing design, material or construction or experimental housing standards for neighborhood design, may be insured under section 233 of the Act. To be eligible, a mortgage or loan shall also meet the requirements of the applicable multifamily project or project improvement loan insurance program under sections 207, 213, 220, 221, 231, 232 or 234 of the Act.

§ 233.505 Incorporation by reference.

(a) To be eligible for insurance under this subpart, a mortgage or project improvement loan shall meet the eligibility requirements for insurance under § 207.1 et seq. (Part 207, Subpart A); § 213.1 et seq. (Part 213, Subpart A); § 220.501 et seq. (Part 220, Subpart C); § 221.501 et seq. (Part 221, Subpart C); § 231.1 et seq. (Part 231, Subpart A); § 232.1 et seq. (Part 232, Subpart A); § 234.501 et seq. (Part 234, Subpart C); § 235.501 et seq. (Part 235, Subpart D); § 236.1 et seq. (Part 236, Subpart A); § 241.1 et seq. (Part 241, Subpart A); § 810.1 et seq. (Part 810, Subpart A); § 1000.1 et seq. (Part 1000, Subpart A); or § 1100.1 et seq. (Part 1100, Subpart A) of this chapter, except that:

(1) The prescribed tests of economic soundness or acceptable risk shall not be applicable.

(2) In lieu of establishing mortgage limits upon the basis of a percentage of the Commissioner's estimate of appraised value, or replacement cost, or cost of repair and rehabilitation, as required by the applicable section under which the mortgage or loan would otherwise be eligible, the mortgage limits shall be determined by applying the percentage prescribed by the pertinent section to the following:

(i) In cases involving new construction, such percentage shall be applied to of replacing the property using comthe Commissioner's estimate of the cost parable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(ii) In cases involving repair and rehabilitation, such percentage shall be applied to the sum of:

(*a*) The Commissioner's estimate of the value of the property before repair and rehabilitation; plus

(*b*) The lesser of either the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards.

(3) In cases involving project improvements, instead of establishing mortgage limits upon the basis of the Commissioner's estimate of the cost of such improvements, the limit shall be determined on the basis of the Commissioner's estimate of the cost of replacing the improvements using comparable conventional design, materials, and construction, or of using advanced housing technology or experimental property standards, whichever is the lesser.

(4) In the case of Operation Breakthrough Prototype Site Developments involving expenditure of appropriated funds for research and technology above amounts available from insured mortgage proceeds, the mortgage may be insured without regard to one or more of the regulatory requirements which are not mandatory under controlling statutes.

(b) For the purposes of this subpart, all references in part 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, 810, 1000, or 1100 of this chapter to section 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, or 810 of the National Housing Act or to titles X and XI of such Act shall be construed to refer to section 233 of such Act.

§ 233.510 Eligible projects.

To be eligible for insurance:

(a) The mortgage or project improvement loan shall relate to property involving the utilization and testing of advanced technology in housing design, material, or construction, or experimental property standards for neighborhood design.

(b) The Commissioner shall make determinations as follows:

(1) That the property is an acceptable risk, giving consideration to the need for testing advanced housing design or experimental property standards.

(2) That the utilization and testing of the advanced technology or experimental property standards involved will provide data or experience which the Commissioner deems to be significant in reducing housing costs or improving housing standards, quality, livability, or durability or improving neighborhood design.

§ 233.515 Agreements, covenants and easements.

Prior to insurance endorsement, the mortgagor shall execute such agreements, covenants and easements running with the land as the Commissioner shall determine are necessary to allow the Commissioner to make inspections and technical observations of the experimental features of the project.

Subpart E—Contract Rights and Obligations—Projects

§ 233.751 Incorporation by reference.

(a) Mortgages and project improvement loans insured under the experimental project insurance program shall be governed by the provisions of the regulations covering contract rights and obligations, as they respectively relate to the several mortgage or project improvement loan programs set forth in § 233.501 of this part.

(b) For the purpose of this subpart, all the references in § 207.251 et seq. (Part 207, Subpart B); § 213.251 et seq. (Part 213, Subpart B); § 220.751 et seq. (Part 220, Subpart D); § 221.751 et seq. (Part 221, Subpart D); § 231.251 et seq. (Part 231, Subpart B); § 232.251 et seq. (Part 232, Subpart B); § 234.751 et seq. (Part 234, Subpart D); § 235.701 et seq. (Part 235, Subpart E); § 236.251 et seq. (Part 236, Subpart B); § 241.251 et seq. (Part 241, Subpart B); § 810.251 et seq. (Part 810, Subpart B); § 1000.251 et seq. (Part 1000, Subpart B); or § 1100.251 et seq. (Part 1100, Subpart B) of this chapter to:

(1) Section 207, 213, 220, 221, 231, 232, 234, 235, 236, 241, or 810 of the National Housing Act or to titles X and XI of such Act shall be construed to refer to section 233 of such Act; and

(2) The Cooperative Management Housing Insurance Fund or the Special Risk Insurance Fund shall be construed to refer to the General Insurance Fund.

§ 233.760 Payment of insurance benefits.

(a) *Insured mortgages.* All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to multifamily project mortgages insured under this subpart, except that all of the insurance claim shall be paid in cash unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, all of the claim shall be paid by issuing debentures and by making a cash payment adjusting any difference between the total amount of the claim and the amount of the debentures issued.

(b) *Insured project improvement loans.* Where an insured project improvement loan is involved, the payment of insurance benefits shall be governed by §§ 220.822 through 220.842 of this chapter.

Subpart F—Assistance and Interest Reduction Payments

§ 233.900 Incorporation by reference.

(a) *Section 235(j) type project mortgages.* (1) All of the provisions of Subpart F, Part 235, concerning assistance payments pursuant to section 235(j) of the Act, apply with full force and effect to a mortgage insured under Subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of § 235.501 et seq. (Part 235, Subpart D), except as such requirements are modified by § 233.505 et seq.

(2) Reference in § 235.805 to "this part" shall be deemed to refer to Part 233.

(b) *Section 236 type project mortgages.* (1) All of the provisions of Subpart C, Part 236, concerning interest reduction payments pursuant to section 236 of the Act, apply with full force and effect to a mortgage insured under Subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of § 236.1 et seq. (Part 236, Subpart A), except as such requirements are modified by § 233.505 et seq.

(2) Reference in § 236.505 to "Subparts A and B of this part" shall be deemed to refer to Subparts D and E of this part.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

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AUTHORITY: The provisions of this Part 234 issued under sec. 211, 52 Stat. 23, as amended, sec. 234, 75 Stat. 161; 12 U.S.C. 1715b, 1715y.

Subpart A—Eligibility Requirements—Individually Owned Units

DEFINITIONS

§ 234.1 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Mortgage" means a first lien covering a fee interest or eligible leasehold interest, in a one-family unit in a multifamily project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated.

(e) "Mortgagor" means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) "Mortgagee" means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) "Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument by the Commissioner.

(h) "Project mortgage" means a mortgage which is or has been insured under any of the FHA multifamily housing programs, other than sections 213(a)(1) and 213(a)(2) of the Act.

(i) "Beginning of amortization" means the date one month prior to the date of the first monthly payment to principal and interest.

(j) "Family unit" means a one-family unit including the undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated.

(k) "Multifamily project" means a project containing four or more family units.

(l) "Common areas and facilities" means those areas of the project and of the property upon which it is located that are for the use and enjoyment of the owners of family units located in the

project. The areas may include the land, roofs, main walls, elevators, staircases, lobbies, halls, parking space and community and commercial facilities.

(m) "Restricted common areas and facilities" means those areas and facilities restricted to a particular family unit or number of family units.

APPROVAL OF MORTGAGEES

§ 234.5 Qualification of lenders.

The provisions of §§ 203.1 to 203.9, inclusive, of this chapter, shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

APPLICATION AND COMMITMENT

§ 234.10 Submission of application.

Any approved mortgagee may submit an application for insurance of a mortgage under this subpart.

§ 234.11 Form of application.

An application for insurance shall be made upon a standard form prescribed by the Commissioner.

§ 234.12 Approval and commitment.

Upon approval of an application, acceptance of the mortgage for insurance shall be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the mortgage will be insured.

§ 234.13 Application and commitment extension fees.

(a) *Application fee*—(1) *Amount of fee.* The mortgagee shall pay an application fee of $40 per family unit to cover the cost of processing.

(2) *Time of fee payment.* The application fee shall be due and payable by the mortgagee upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the mortgagee for an application fee previously charged under such conditions as the Commissioner prescribes.

(4) *Fee not required.* A mortgagee shall not be required to pay an application fee where:

(i) The application is not accepted for processing; or

(ii) The application is made on behalf of a veteran for the insurance of a mortgage to refinance an existing insured mortgage which is in default by reason of his military service, if the Commissioner finds that the charging of such fee would be inequitable under the circumstances of the transaction. For the purpose of this subdivision the word "veteran" shall mean a person who has 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; or

(iii) The application is in connection with the insurance of a mortgage to finance the purchase of Commissioner-held property; or

(iv) The application is filed prior to the issuance of the commitment to insure the project mortgage.

(b) *Commitment extension fee*—(1) *Amount of fee.* The mortgagee shall pay a commitment extension fee of $25 for extending an outstanding commitment or for reopening and extending an expired commitment within two months after such expiration.

(2) *Time of fee payment.* The commitment extension fee shall be due and payable by the mortgagee upon receipt from the FHA of a monthly statement covering the related transactions.

(3) *Credit for fee previously charged.* A credit may be allowed the mortgagee for a commitment extension fee previously charged under such conditions as the Commissioner prescribes.

(4) *Fee not required.* A mortgagee shall not be required to pay a commitment extension fee where:

(i) The commitment to be extended or reopened is in connection with an application made on behalf of a veteran under circumstances set forth in paragraph (a) (4) (ii) of this section; or

(ii) The commitment is in connection with the insurance of a mortgage to finance the purchase of Commissioner-held property.

(iii) The commitment is in connection with the initial sale of the family units following conversion of the multifamily structure to apartment ownership.

§ 234.14 Certification of appraisal amount.

An application for insurance shall be accompanied by an agreement satisfactory to the Commissioner, executed by the seller or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling he will deliver to the purchaser of the property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

§ 234.15 Certificate and contract regarding use of dwelling for transient or hotel purposes.

An application for insurance of a mortgage on a family unit which is one of a group of 5 or more family units owned by the same mortgagor shall be accompanied by a contract, in form satisfactory to the Commissioner, signed by the proposed mortgagor covenanting and agreeing that so long as the proposed mortgage is insured by the Commissioner the mortgagor will not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days; or (b) any rental if the occupants of the unit are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

§ 234.16 Certificate of nondiscrimination by mortgagor.

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

ELIGIBLE MORTGAGES

§ 234.25 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner. 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.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in $100 multiples. A mortgage having a principal obligation not in excess of $15,000 and an amortization period of either 20, 25, 30 or 35 years may be in $50 multiples.

(c) *Payments and maturity dates.* The mortgage shall:

(1) Provide for payments to become due on the first day of the month.

(2) Have a maturity satisfactory to the Commissioner of not to exceed three-quarters of the Commissioner's estimate of the remaining economic life of the property. The maturity shall also be not less than 10 nor more than 30 years from the date of the beginning of amortization, except that the term may be 35 years from the date of the beginning of amortization in either of the following instances:

(i) The mortgagor is an owner-occupant of the property and is not able, as determined by the Commissioner, to make the required payments under a mortgage having a shorter amortization period.

(ii) The application for the conversion of an insured project to condominium ownership was received by the Commissioner prior to August 10, 1965.

(3) Have an amortization period of either 10, 15, 20, 25, 30 or 35 years by providing for either 120, 180, 240, 300, 360 or 420 monthly amortization payments.

(4) 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.

§ 234.26 Conversion of project to family units.

No mortgage shall be eligible for insurance unless the following requirements are met:

(a) *Location of family unit.* In all cases (except where the family unit is located in a project involving 11 or less units), the family unit shall be located in a project which is or has been covered by a project mortgage insured by the FHA.

(b) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment-ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner prior to its execution, and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the multifamily project is located.

(c) *FHA conversion and release plans.* The initial conversion of the project to apartment-ownership shall be required to comply with an FHA-approved conversion plan. The conversion plan shall provide for:

(1) The termination by payment in full of the mortgage or by voluntary termination of the insurance contract covering any FHA insured mortgage on the project, unless the Commissioner determines that his interests and those of the individuals purchasing the family units are best served by not requiring the termination of the insurance.

(2) The release of each family unit from any existing project mortgage covering the project pursuant to a release plan approved by the FHA. The plan shall provide for a payment to be made on the outstanding balance of the project mortgage in an amount equal to the share of the balance determined by the FHA to be attributable to the family unit.

(3) The conveyance of family units, equal in value to at least 80 percent (or such lesser percentage as the Commissioner may prescribe) of the total value of all units, to owners approved by the FHA.

(d) *Certificates by mortgagee.* The mortgagee shall certify that:

(1) The individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment-ownership; and

(2) The Mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on same; and

(3) The family unit is assessed and subject to assessment for taxes pertaining only to that unit.

(e) *Mortgagor limitations.* The family unit to be covered by an insured mortgage shall be for the use and occupancy of the mortgagor or the mortgagor shall be the owner of another family unit covered by an insured mortgage for such use and occupancy. The mortgagor may not own more than four family units covered by insured mortgages, one of which shall be for his own use and occupancy.

(f) *FHA controls for consumer and public interest.* The Commissioner may require such conditions and provisions as he deems necessary for the protection of the consumer and public interest, including but not limited to the execution of a regulatory agreement between the Owners and the Commissioner which shall be made applicable to the Association or Cooperative of Owners or to any subsequent owner of a family unit.

(g) *Project mortgagee certification.* The project mortgagee shall certify, notwithstanding any provision of the mortgage covering prepayment, that no charge is contemplated or has been collected for prepayment in full of the project mortgage.

§ 234.27 Maximum mortgage amounts.

(a) *Occupant mortgagors.* A mortgage executed by a mortgagor who is an occupant of the unit shall not exceed the lesser of the following:

(1) $33,000.

(2) 97 percent of the first $15,000 of the Commissioner's estimate of appraised value of the family unit, as of the date the mortgage is accepted for insurance, and 90 percent of such value in excess of $15,000 but not in excess of $25,000 and 80 percent of such value in excess of $25,000.

(b) *Increased mortgage amount—elevator type structures.* [Reserved]

(c) *Increased mortgage amount—high cost areas.* If the Commissioner finds that because of high costs in Alaska, Guam or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as the Commissioner finds may be necessary to compensate for such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Nonoccupant mortgagors.* A mortgage executed by a mortgagor who is not the occupant of the unit shall not exceed:

(1) 85 percent of any amount computed under paragraph (a) of this section; or

(2) The full amount computed under paragraph (a) of this section if the mortgage covers a unit and the Commissioner is furnished with certificates indicating that:

(i) 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 prior to the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the property is not sold prior to the due date of the 18th amortization payment of the mortgage to a purchaser acceptable to the Commissioner who will occupy the property, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account shall be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage;

(iv) 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, shall be deducted from the amount of debentures to which the mortgagee would otherwise be entitled if a claim for debentures is filed.

§ 234.28 Mortgagor's minimum investment.

(a) At the time the mortgage is insured the mortgagor shall have paid on account of the family unit at least 3 percent of the Commissioner's estimate of the cost of acquisition or such larger amount as the Commissioner may determine in cash or its equivalent.

(b) A mortgagor who is 60 years of age or older as of the date the mortgage is accepted for insurance may borrow from a corporation or person satisfactory to the Commissioner, the payment required by this section, plus settlement costs which may include initial payments for taxes, hazard insurance, mortgage insurance premium and other prepaid expenses, as determined by the Commissioner. As security for the loan, the mortgagor may give a note or other evidence of indebtedness bearing interest at a rate not in excess of that permitted in the insured mortgage. The aggregate amount of the insured mortgage and the loan referred to in this section shall not exceed an amount equal to the Commissioner's estimate of the appraised value of the property, plus an amount equal to the initial payments for taxes, hazard insurance, mortgage insurance premium, and other prepaid expenses, as determined by the Commissioner.

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 234.36 Amortization provisions.

The mortgage shall contain complete amortization provisions satisfactory to the Commissioner, requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Commissioner. The sum of the principal and interest payments in each month shall be substantially the same.

§ 234.37 Payment of insurance premiums or charges; adjusted mortgage insurance premiums.

(a) The mortgage shall provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. If the mortgage contains a provision permitting the holder to make future "open-end" advances or is amended or modified to include such a provision, the mortgage shall provide for a monthly payment by the mortgagor of an amount equal to one-twelfth of the annual charge, payable by the mortgagee to the Commissioner for insurance of such advances. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide that upon the payment of the mortgage before maturity, the mortgagor shall pay the adjusted mortgage insurance premium referred to in this subchapter, but shall not provide for the payment of any further charge on account of such prepayment.

§ 234.38 Mortgage provisions for additional payments and covenants.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize any ground or lease rents and the estimated amount of any taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, within a period ending one month prior to the dates on which such charges become delinquent. The mortgage shall further provide that payments and such property insurance premiums as may be required by the mortgagee, shall be held by the mortgagee for the benefit and account of the mortgagor in a manner satisfactory to the Commissioner, for the purpose of paying ground rents, taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, before they become delinquent. The mortgage must also make provision for adjustments in case the estimated amount of taxes, special assessments, and such property insurance premiums as may be required by the mortgagee, shall prove to be more, or less, than the actual amount thereof paid by the mortgagor.

(b) The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership and a provision approved by the Commissioner by which the Regulatory Agreement is incorporated in and made a part of the mortgage.

(c) As used in the mortgage the term "assessments" except where it refers to assessments and charges by the Association shall be defined to mean "special assessments by state or local governmental agencies, districts or other public taxing or assessing bodies."

§ 234.39 Application of payments.

All monthly payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply the aggregate payment to the following items in the order set forth:

(a) Premium charges under the contract of insurance, including insurance charges for open-end advances;

(b) Ground rents, taxes, special assessments, and such property insurance premiums as may be required by the mortgagee;

(c) Interest on the mortgage;

(d) Amortization of the principal of the mortgage; and

(e) Any deficiency in the amount of any aggregate monthly payment shall, unless made good by the mortgagor prior to, or on, the due date of the next aggregate payment, constitute a default under the mortgage.

§ 234.46 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment more than 15 days in arrears, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 234.47 Mortgagor's payments when mortgage is executed.

The mortgagor shall pay to the mortgagee, upon the execution of the mortgage, a sum sufficient to pay any ground rents and the estimated taxes, special assessments, and fire and other hazard insurance premiums for the period beginning on the date to which such ground rents, taxes, assessments, and insurance premiums were last paid and ending on the date of the first monthly payment under the mortgage plus an amount sufficient to pay the mortgage insurance premium from the date of the closing of the loan to the date of the first monthly payment.

§ 234.48 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts.

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20 or 1 percent of the original principal amount of the mortgage, whichever is the greater;

(2) Reasonable and customary amounts for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges or fees as may be authorized by the Commissioner.

(b) Prior to insurance of any mortgage, the mortgagee shall furnish to the Commissioner a signed statement in form satisfactory to the Commissioner, listing all items for which any charge, fee or discount was collected by it, from the mortgagor, together with the amount of each such charge, fee or discount. The Commissioner's endorsement of the mortgage for insurance shall constitute approval of the listed charges, fees or discounts.

(c) Nothing in this section shall be construed as prohibiting the mortgagor from dealing through a broker who does not represent the mortgagee, if he prefers to do so, and paying such compensation as is satisfactory to the mortgagor in order to obtain mortgage financing.

§ 234.49 Eligible mortgages in Alaska, Guam, or Hawaii.

If the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, or if the mortgagor is regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation to such an extent and in such manner as the Commissioner determines advisable to provide reasonable rental and sales prices and a reasonable return on the investment, any mortgage otherwise eligible for insurance under this subpart, may be insured without regard to any requirement that the mortgagor:

(1) Be the owner and occupant of the property;

(2) Has paid on account of the property a prescribed percentage of the appraised value of the property; or

(3) Certify that the mortgaged property be free and clear of all liens other than the mortgage offered for insurance and that there will not be any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property.

(c) Economic soundness shall not be applicable to mortgages covering property located in Alaska or in Guam or in Hawaii, but the Commissioner shall find that the property is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam, or in Hawaii.

§ 234.51 Owner-occupancy in military service cases.

Any mortgage otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor be the occupant of the property at the time of insurance,

where the Commissioner is satisfied that the inability of the mortgagor to occupy the property is by reason of his entry into military service subsequent to the filing of an application for insurance and the mortgagor expresses an intent (in such form as may be prescribed by the Commissioner), to occupy the property upon his discharge from military service.

ELIGIBLE MORTGAGORS

§ 234.55 Mortgage lien.

A mortgagor shall establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage and that there will not be outstanding any other unpaid obligation contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations which are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

§ 234.56 Relationship of income to mortgage payments.

A mortgagor shall establish that the periodic payments required in the mortgage submitted for insurance bear a proper relation to his present and anticipated income and expenses.

§ 234.57 Credit standing.

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

§ 234.59 Certificate and contract regarding use of family units for transient or hotel purposes.

A mortgagor under a mortgage covering a one-family unit which is one of a group of five of more one-family units held by the same mortgagor shall certify under oath that until the mortgage is paid in full or the contract of insurance otherwise terminated, the mortgagor shall not rent, permit the rental, or permit the offering for rental of the housing units, or any part thereof, covered by such mortgage for transient or hotel purposes. The mortgagor shall further execute a contract with the Commissioner providing that so long as the said mortgage is insured he will not rent such housing or any part thereof, for transient or hotel purposes as defined in § 234.15.

ELIGIBLE PROPERTIES

§ 234.65 Nature of title.

A mortgage to be eligible for insurance shall be on a fee interest in, or on the leasehold interest in, a one-family unit in a project including an undivided interest in the common areas and facilities, and such restricted common areas and facilities as may be designated. To be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date the mortgage is executed.

§ 234.67 Rental properties.

No family unit in a project which has been committed to a plan of apartment ownership shall be rented for transient or hotel purposes, as defined in § 234.15, while the family unit is subject to an FHA-insured mortgage.

§ 234.68 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.

OPEN-END ADVANCES

§ 234.70 Eligibility of open-end advances.

Any approved mortgagee may make advances, referred to in this subpart as "open-end" advances, in connection with the mortgages previously insured under this subchapter or insured after the effective date of this subpart, subject to compliance with the requirements of this section.

(a) The proceeds of any open-end advance shall be used for the purpose of improvements or repairs which in the Commissioner's discretion substantially protect or improve the basic livability or utility of the property involved. The proceeds of such advances shall not be used for the purpose of financing obligations previously incurred for such repairs or improvements.

(b) The mortgagee shall submit an application for insurance of open-end advances upon a standard form prescribed by the Commissioner.

(c) Applications filed must be accompanied by the mortgagee's remittance for the sum of $10 for processing of the application. If an application is refused as a result of preliminary examination by the Commissioner or in such other instances as the Commissioner may determine the entire fee will be returned to the applicant.

(d) In addition to the application fee required by paragraph (c) of this section, the mortgagee may charge the mortgagor a fee not to exceed $25 or 1 percent of the open-end advance, whichever is the lesser, and the amount of out-of-pocket expenditures made by the mortgagee for customary costs of title search and recording fees. The mortgagee may require the mortgagor to pay to the mortgagee all charges permitted under this section on or prior to the date of final disbursement of the open-end advance, together with a sum sufficient to pay the initial insurance charge provided for in Subpart B of this part. No portion of such charges may be included in the principal amount of the open-end advance.

(e) Upon approval of an application, acceptance of the advance for insurance will be evidenced by the issuance of a commitment setting forth, upon a form prescribed by the Commissioner, the terms and conditions upon which the advance will be insured.

(f) The amount of an advance for insurance shall be added to the unpaid principal obligation of the mortgage, whereupon the aggregate of the original unpaid principal and the amount of the open-end advance shall:

(1) Bear interest at the rate provided in such mortgage, payable in monthly installments on the principal then outstanding;

(2) Be payable in substantially equal monthly payments in an amount sufficient to amortize the aggregate principal amount within the remaining original term of the mortgage.

(g) The amount of any advance for insurance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided*, That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of §§ 234.27 and 234.49.

(h) A mortgagee may amend or modify any approved FHA mortgage form by adding such provisions as it deems necessary for the purpose of making open-end advances, by any rider or modification agreement which is valid and enforceable in the jurisdiction in which the property covered by the mortgage is located, provided such rider or modification agreement retains in the mortgagee the right to approve or disapprove additional advances on such terms and conditions as the mortgagee may prescribe. The mortgagee shall have the sole responsibility for determining that any mortgage amended by an "open-end"

rider or modification agreement will be a valid and enforceable instrument and will constitute a valid first lien on the property upon which the Commissioner based his valuation.

§ 234.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations—Individually Owned Units

§ 234.251 Definitions.

The definitions contained in § 203.251 of this chapter and § 234.1 shall apply to this subpart.

§ 234.255 Incorporation by reference.

(a) *Provisions.* All of the provisions of §§ 203.251 through 203.435 of this chapter (Part 203, Subpart B) covering mortgages insured under section 203 of the National Housing Act shall apply to mortgages insured under section 234(c) of the National Housing Act except the following provisions:

Sec.
203.357 Deed in lieu of foreclosure.
203.379 Adjustment for fire, flood, earthquake, or tornado damage.
203.380 Certificate of property condition.
203.389 Waived title objections.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Right and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.440 et seq. Insured home improvement loans.

(b) *References.* For the purposes of this subpart, all references in §§ 203.251 through 203.435 of this chapter (Part 203, Subpart B) to section 203 of the act, one- to four-family, and the Mutual Mortgage Insurance Fund, shall be construed to refer to section 234 of the act, one-family unit, and the General Insurance Fund. The term "property" or "each family dwelling unit" as used in §§ 203.251 through 203.435 of this chapter (Part 203, Subpart B) shall be construed to include "the one-family unit and the undivided interest in the common areas and facilities as may be designated".

§ 234.260 Assignment of mortgage and certificate by mortgagee.

In addition to the requirements of §§ 203.352 and 203.353 incorporated by reference, the mortgagee shall certify as to any changes in the plan of apartment ownership including the administration of the property. Any changes shall require FHA approval.

§ 234.262 Exception to deed in lieu of foreclosure.

All of the provisions of § 203.357 of this chapter relating to acceptance of a deed in lieu of foreclosure shall apply to mortgages insured under this part ony if the mortgagee establishes to the satisfaction of the Commissioner that there are no unpaid assessments owed the Association or Cooperative of Owners.

§ 234.265 Contents of deed and supporting documents.

In addition to the requirements of § 203.367, incorporated by reference, the deed shall comply with the plan of apartment ownership. Any changes therein, including the administration of the property, shall require FHA approval.

§ 234.270 Condition of the multifamily structure.

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

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

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

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

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

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

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

(c) The provisions in paragraph (b) of this section shall be applicable with respect to the insurance of all mortgages whether insured prior to May 8, 1968, or insured on or after such date.

(d) The mortgagee shall not be liable for damage to the property by waste in connection with mortgage insurance claims paid on or after July 2, 1968.

§ 234.273 Assessment of taxes.

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

§ 234.274 Certificate of tax assessment.

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

§ 234.275 Certificate or Statement of condition.

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

(1) Certify that the conditions of § 234.270(a) have been met; or

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

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

§ 234.280 Cancellation of hazard insurance.

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

§ 234.285 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

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

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

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

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

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

Subpart C—Eligibility Requirements—Projects—Conversion Individual Sales Units

§ 234.501 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 207 of this chapter concerning eligibility requirements of mortgages covering multifamily housing under section 207 of the National Housing Act apply to blanket mortgages on condominium projects insured under section 234 of the National Housing Act except the following provisions.

Sec.
207.1 Application filing and approved fees.
207.4 Maximum mortgage amounts.
207.11 Soundness of project.
207.14 Prepayment privilege; prepayment and late charges.
207.15 Issuance of bonds secured by trust indenture.
207.19 Required supervision of private mortgagors.
207.20 Occupancy requirements.
207.23 Eligibility of property.
207.24 Development of property.
207.31 Eligibility of miscellaneous type mortgages.
207.32 Eligibility of refinancing transactions.
207.33 Eligibility of mortgages on trailer courts or parks for trailer coach mobile dwellings.

(b) For the purposes of this subpart all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to blanket mortgages insured under section 234 of the Act.

§ 234.505 Definitions.

As used in this subpart, the following terms shall have the meaning indicated.

(a) "Act" means the National Housing Act as amended.

(b) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(c) "Insured mortgage" means a mortgage insured by the endorsement of the credit instrument by the Commissioner.

(d) "Maturity date" means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

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

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

(g) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(h) "Replacement cost" is the cost, as estimated by the Commissioner, of the property or project when the proposed improvements are completed. It may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction and such other items of cost as approved by the Commissioner.

(i) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

§ 234.506 Application filing and approved fees.

All of the provisions of § 207.1 of this chapter relating to the filing of an application for insurance and the fees to be paid to the Commissioner apply to cases involving mortgages to be insured under this subpart, except that in all cases the combined application, commitment, and inspection fees shall aggregate no less than the following amounts:

(a) $50 per dwelling unit, in a case involving new construction.

(b) $40 per dwelling unit, in a case involving rehabilitation.

§ 234.510 Certification by mortgagee.

The application for insurance shall be accompanied by a certification from the mortgagee that the law of the jurisdiction will permit the project to be converted to a plan of apartment ownership which will meet the requirements of this part.

§ 234.515 Certification by mortgagor.

The application for insurance shall be accompanied by a certification from the mortgagor that it intends, upon completion of the project, to commit the ownership of the project to a plan of apartment ownership under which each family unit in the project will be eligible for individual mortgage insurance under section 234(c) of the Act. The mortgagor shall further certify that it intends faithfully and diligently to make all reasonable effort to establish the plan of apartment ownership and to sell the family units to purchasers approved by the Commissioner.

§ 234.520 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be:

(1) On real estate held in fee simple; or

(2) On the interest of the lessee in real estate held under a lease having one of the following terms:

(i) A period of not less than 95 years and which is renewable.

(ii) A period of not less than 75 years to run from the date the mortgage is executed.

(iii) Any other period satisfactory to the Commissioner which is not less than 55 years, provided the lease contains an option in the lessee to extend the lease to a total term of 75 years.

(b) Leases shall contain provisions permitting the conversion of the project to an FHA approved plan of apartment ownership.

(c) The project shall consist of not less than four dwelling units which may be detached, semidetached, or row house, or multi-family structures.

§ 234.525 Maximum mortgage amounts—new construction.

The mortgage may involve a principal obligation not in excess of the lowest of the following limitations:

(a) *Dollar limitation.* $20,000,000 if executed by a Private Mortgagor, or $25,000,000 if executed by a Public Mortgagor.

(b) *Loan-to-value limitation.* 90 percent of the Commissioner's estimate of replacement cost of the project.

(c) *Family unit limitation.* For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Commissioner) an amount per family unit, depending on the number of bedrooms, which may be:

(1) $9,900 without a bedroom.
(2) $13,750 with one bedroom.
(3) $16,500 with two bedrooms.
(4) $20,350 wtih three bedrooms.
(5) $23,100 with four or more bedrooms.

(d) *Individual unit limitation.* An amount equal to the sum of the unit mortgage amounts determined under the provisions of section 234(c) of the Act, assuming the mortgagor to be the owner and occupant of each family unit.

§ 234.530 Increased mortgage amounts.

(a) *Elevator type structures.* In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitation per family unit as provided in § 234.525(c) to not to exceed:

(1) $11,550 per family unit without a bedroom.

(2) $16,500 per family unit with one bedroom.

(3) $19,800 per family unit with two bedrooms.

(4) $24,750 per family unit with three bedrooms.

(5) $28,050 per family unit with four or more bedrooms.

(b) *High cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, but not to exceed 45 percent, the dollar amount limitations set forth in paragraph (a) of this section and in § 234.525(c).

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design and livability within the limitations of maximum mortgage amounts provided in this part, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for

such costs, but not to exceed, in any event, the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

§ 234.531 Loans to cover 2 year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 207.7 of this chapter on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 234.535 Adjusted mortgage amount—rehabilitation projects.

In addition to the maximum mortgage amount limitations of §§ 234.525 and 234.530, a mortgage having a principal amount computed in compliance with the applicable provisions of this subpart, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the fee simple owner of the project, the maximum mortgage amount shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed repairs or rehabilitation.

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed the sum of:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(2) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of the sum of:

(1) The Commissioner's estimate of the cost of the repair or rehabilitation; and

(2) The actual purchase price of the land and improvements, but not in excess of the Commisioner's estimate of the fair market value of such land and improvements prior to the repair or rehabilitation.

§ 234.540 Reduced mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 234.545 Prepayment privilege and prepayment charges.

(a) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving to the mortgagee 30 days notice in writing in advance of its intention to prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any prepayment charge. No prepayment charge shall be collected if prepayment results from either of the following:

(1) A payment requirement of the Commissioner.

(2) Prepayment of the project mortgage as part of a plan for committing the ownership of the project to family unit ownership.

§ 234.550 Late charge.

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

§ 234.555 Zoning, deed or building restrictions.

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

§ 234.560 Supervision by Commissioner.

(a) *In general.* All of the provisions of § 207.19 of this chapter relating to requirements incident to insurance of advances as well as those concerning labor standards and prevailing wage requirements, apply to mortgages executed by eligible mortgagors under this subpart but paragraphs (a), (b), (e), (f), (g) and (h) of such § 207.19 do not apply.

(b) *Type of supervision.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 234.565 Occupancy requirements.

(a) *Family with children.* The mortgagor shall certify under oath to the Commissioner that:

(1) In selecting tenants for the project, or in selling family units under the plan for apartment ownership, the mortgagor will not discriminate against any family because it includes children.

(2) The mortgagor will not sell the project while the mortgage insurance is in effect, unless the purchaser makes the certification required in subparagraph (1) of this paragraph.

(b) *Transient or hotel purposes.* The mortgagor shall certify under oath to the Commissioner that, so long as the mortgage is insured by the Commissioner, the mortgagor will not rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service.

§ 234.570 Advance amortization requirements.

If prior to the beginning of amortization net income, as defined by the Commissioner, is received as a result of the operation of the project, such net income, to the extent determined by the Commissioner, shall be deposited in an escrow account pursuant to an agreement approved by the Commissioner. The agreement shall provide that disbursement shall be made only as directed by the Commissioner.

Subpart D—Contract Rights and Obligations—Projects

§ 234.751 Incorporation by reference.

(a) All of the provisions of §§ 207.251 et seq. (Part 207, Subpart B) of this chapter covering mortgages insured under section 207 of the National Housing Act shall apply to mortgages insured under section 234(d) of such Act.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the National Housing Act shall be construed to refer to section 234(d) of the act.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

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235.5 Definitions used in this subpart.
235.7 Application and commitment extension fees.
235.10 Eligible mortgagors.
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235.15 Eligible types of dwellings.
235.20 Requirements for family unit in condominium.
235.22 Mortgage provisions.
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235.805 Eligible mortgages.
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235.820 Amount of assistance payments.
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235.835 Effect of assignment of mortgage.
235.999 Effect of amendments.

AUTHORITY: The provisions of this Part 235 issued under sec. 211, 52 Stat. 23, as amended, sec. 235, 82 Stat. 477, as amended; 12 U.S.C. 1715b, 1715z.

Subpart A—Eligibility Requirements—Homes for Lower Income Families

§ 235.1 Incorporation by reference.

(a) All of the provisions of Subpart A, Part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages insured under section 235(i) of the National Housing Act, except the following provisions:

203.12 Application and commitment extension fees.
203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.25 Late charge.
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203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.38 Location of dwelling.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.44 Eligibility of open-end advances.
203.50 through 203.102 Insured home improvement loans.

(b) For the purposes of this subpart, all references in Part 203 of this chapter to section 203 of the Act shall be construed to refer to section 235 of the Act.

§ 235.5 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Adjusted annual income" means the annual family income remaining after making certain exclusions from gross annual income. The following items shall be excluded, in the order listed, from family gross annual income:

(1) 5 percent of such gross annual income, in lieu of amounts to be withheld (social security, retirement, health insurance, etc.).

(2) Any unusual income or temporary income, as defined by the Commissioner.

(3) The earnings of each minor in the family who is living with such family, plus the sum of $300 for each such minor.

(b) "Displaced family" means a family displaced from an urban renewal area, or as a result of a governmental action, or as a result of a major disaster as determined by the President.

(c) "Family" means (1) two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling or unit; (2) a handicapped person who has a physical impairment which is expected to be of long-continued and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability to live independently could be improved by more suitable housing conditions; or (3) a single person, 62 years of age or older.

(d) "Gross annual income" means the total income, before taxes and other deductions, received by all members of the mortgagor's household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments, and such other income items as the Commissioner considers appropriate.

(e) "Minor" means a person under the age of 21. As used in this subpart, minor shall not include a mortgagor or his spouse.

§ 235.7 Application and commitment extension fees.

All of the provisions of § 203.12 of this chapter, concerning application and commitment extension fees, apply to mortgages insured under this part, except that the mortgagee shall not be required to pay an application or a commitment extension fee where the dwelling or family unit involved is being released from a project mortgage which is insured at the time of the release under one of the parts of this chapter.

§ 235.10 Eligible mortgagors.

In order to be eligible under this subpart, the mortgagor shall have assets and an annual income within the limits prescribed by the Commissioner.

§ 235.12 Sellers' reimbursement agreement.

In order to be eligible under this subpart, if the mortgage covers a dwelling which is more than 1 year old on the date of the insurance commitment and the insurance commitment was issued after April 9, 1971, the following agreement must be executed by the proper parties:

SELLERS' REIMBURSEMENT AGREEMENT

FHA Case No._____

This agreement made in triplicate this _____ day of _____ by and between _____, hereinafter referred to as the Seller(s), and the Federal Housing Administration, hereinafter referred to as the Insurer:

WITNESSETH

Whereas, the Seller(s) desire(s) to sell the premises located at _____ with a mortgage to be insured under section 235 of the National Housing Act.

Whereas, the Insurer will provide mortgage insurance on said premises under section 235 of the National Housing Act.

1. Now, therefore, in consideration of the sale of a single-family dwelling located at _____,
(insert address, city, county, and State)
which was more than 1 year old on _____
(insert date of issuance of insurance commitment)
and that the purchase of such dwelling is being financed by a mortgage insured under section 235 of the National Housing Act, and in order to induce the buyer(s) and mortgagor(s) to buy such dwelling and the Secretary of Housing and Urban Development to insure and subsidize such mortgage, the undersigned Seller hereby agrees, or Sellers hereby jointly and severally agree, intending to be legally bound, to reimburse the Secretary for any payments made by him to correct or compensate the buyer(s) for structural or other defects which seriously affect the use and livability of such dwelling, and hereby certify that no such defect now exists.

(Strike out 2.a. or 2.b., whichever is inapplicable, and have the Seller(s) and mortgagee initial opposite the part deleted.)

2.a. The Seller(s) hereby certifies(y) that he is (they are) the current or most recent occupant(s) of the property being sold.

2.b. The Seller(s) hereby certifies(y) that he is (they are) *not* the occupant(s) of the property being sold and that he has (they have) deposited in escrow with _____ an amount equal-
(Mortgagee)
ling 5 percent of the sales price of the property covered by this agreement. (The escrow may be in the form of cash, bond, letter of credit, or any other assurance of payment satisfactory to the mortgagee collected or obtained at the time of closing.) The Seller(s) hereby authorize(s) the holder of this escrow to transfer to the Insurer all or such part of these funds as the Insurer, in its sole discretion, determines must be expended to correct or to compensate the purchaser for structural or other defects which seriously affect the use and livability of the premises. Seller(s) also hereby agree(s) to reimburse the Insurer above and beyond the amount escrowed to repair the structural or other defects covered by this agreement. Insurer's determination as to the necessity for, the reasonableness of the amount to be expended for, or the method to be used in performing such corrections or compensation, shall be final and conclusive.

The Insurer and Seller(s) hereby agree that any unused escrow funds set aside pursuant to this agreement including any unused interest shall be returned to the Seller(s) by the escrow holder on the first day of the fourteenth month following the date of the insurance of the mortgage or at such earlier time as may be approved by the Insurer.

The mortgagee hereby acknowledges receipt from the Seller(s) of $_____ in the form of _____ (indicate whether deposit in cash or other form) which it agrees to hold in escrow and to disburse only in accordance with the terms of this agreement; and that, if the escrow is in the form of cash, it will place such cash in an interest bearing account insured by FDIC or FSLIC under which all interest accrued will be added to the amount escrowed.

3. The Seller(s) agree(s) to keep the mortgagee informed of any change in address and the Seller(s) understand(s) that a refusal to satisfy a claim under this agreement could result in a denial to him (them) of future participation in HUD programs.

WARNING

Section 1010 of title 18, U.S.C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of * * * influencing in any way the action of such Administration * * * makes, passes, utters, or publishes any statement, knowing the same to be false * * * shall be fined not more than $5,000 or imprisoned not more than 2 years, or both."

In Testimony Whereof, the parties hereto affix their signatures and seals the day and year first above mentioned.

_____
(Seller)

_____
(Seller)

_____
(Address)

Federal Housing Administration, Department of Housing and Urban Development.

By: _____

_____
Mortgagee

By: _____

_____
Address

In the event that the mortgagee obtains neither the Sellers' certification as to occupancy nor the 5 percent deposit required under the Sellers' Reimbursement Agreement, the mortgagee shall be liable to reimburse the Secretary in an amount not to exceed 5 percent of the sales price, jointly and severally with the Seller(s).

§ 235.15 Eligible types of dwellings.

The mortgage shall involve one of the following types of dwellings:

(a) A single family dwelling, concerning which the application for insurance is approved by the Commissioner prior to the beginning of construction or prior to the beginning of rehabilitation.

(b) A two-family dwelling, one of the units of which is to be occupied by the owner, if the dwelling is purchased with the assistance of a nonprofit organization and is approved by the Commissioner prior to the beginning of substantial rehabilitation.

(c) A one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction or substantial rehabilitation of which shall have been completed not more than 2 years prior to the filing of the application for assistance payments under Subpart C of this part. The family unit shall have had no previous occupant other than the mortgagor.

(d) An existing single family dwelling or a family unit in an existing condominium project which meets such standards as the Commissioner may prescribe and which is to be occupied by a mortgagor of one of the following types:

(1) A displaced family.

(2) A family that has been occupying low rent public housing.

(3) A family with five or more minor persons.

(e) A family unit in an existing project which is released from a multifamily project covered by a mortgage insured pursuant to § 236.1 et seq. or which is released from a multifamily project in which the housing owner has been receiving rent supplement payments pursuant to § 5.1 et seq. of this title.

(f) An existing single family dwelling or a family unit in an existing condominium project concerning which assistance payments have been made on behalf of the previous owner of the dwelling or family unit, if the previous owner was the mortgagor under a mortgage insured pursuant to § 235.45.

(g) An existing single family dwelling or a family unit in an existing condominium project which meets such standards as the Commissioner prescribes and concerning which an application for assistance payments is filed pursuant to § 235.301 et seq. and approved prior to July 1, 1971.

§ 235.20 Requirements for family unit in condominium.

Where the dwelling involved is a one-family unit in a condominium project, the following additional requirements shall be met:

(a) *FHA project financing.* The project in which the family unit is located shall (except where it involves 11 or less units) have been financed with a mortgage which is or has been insured under any of the FHA multifamily housing programs other than sections 213(a)(1) and 213(a)(2) of the National Housing Act.

(b) *Plan of apartment ownership.* The project in which the family unit is located shall have been committed to a plan of apartment ownership by enabling deed, deed of constitution, public deed, or other recorded instrument which has been approved by the Commissioner and which is certified by the mortgagee as acceptable and binding within the jurisdiction where the project is located.

(c) *Certificate by mortgagee.* The mortgagee shall certify as to each of the following:

(1) That the individual deed for the family unit to be covered by an FHA-insured mortgage complies with all legal requirements of the jurisdiction and that ownership thereunder is subject to the plan of apartment ownership.

(2) That the mortgagor has good and marketable title to the family unit subject only to the mortgage which is a valid first lien on the property.

(3) That the family unit is assessed and subject to assessment for taxes pertaining to the unit.

(d) *FHA controls for consumer and public interest.* The Commissioner may require the execution of a regulatory agreement which shall be made applicable to any association of owners and to any subsequent owner of a family unit. The Commissioner may impose such additional conditions and provisions as he deems necessary for the protection of the consumer and public interest.

(e) *Mortgage covenant concerning common expenses and assessments.* The mortgage shall contain a covenant by the mortgagor to pay the allocated share of the common expenses or assessments and charges by the Association of Owners as provided in the Plan of Apartment Ownership and a provision approved by the Commissioner by which the regulatory agreement is incorporated in and made a part of the mortgage.

(f) *Definition of term "assessment".* As used in the mortgage, the term "assessment", except where it refers to assessments and charges by the Association of Owners, shall mean special assessments by State or local governmental agencies, districts or other public taxing or assessing bodies.

§ 235.22 Mortgage provisions.

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated and shall be a first lien upon property that conforms with property standards prescribed by the Commissioner. 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.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in multiples of $50.

(c) *Payments.* The mortgage shall:

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

(2) Have an amortization period of either 10, 15, 20, 25, 30, 35, or 40 years by providing for either 120, 180, 240, 300, 360, 420, or 480 monthly amortization payments.

(d) *Maturity.* (1) The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage, except that such maturity may be 35 or 40 years in the case of any mortgagor, if it is determined by the Commissioner that the mortgagor is not able to make the required payments under a mortgage having a shorter amortization period and if each of the following requirements is met:

(i) The dwelling was approved for mortgage insurance by the Commissioner or by the Farmers Home Administration prior to the beginning of construction or approved for guaranty, insurance, or direct loan by the Administrator of Veterans' Affairs prior to such construction.

(ii) The dwelling was inspected by the Commissioner or by the Farmers Home Administration and found to have been completed in compliance with the terms of the FHA commitment, or inspected by the VA and found to have been completed in compliance with the terms of the VA Certificate of Reasonable Value.

(2) No mortgage shall have a maturity exceeding three-quarters of the Commissioner's estimate of the remaining economic life of the building improvements. If this limitation results in a term of less than 15, 20, 25, 30, 35, or 40 years, the term shall be adjusted to the next lower 5-year period.

§ 235.25 Maximum mortgage amount.

A mortgage shall not exceed the following:

(a) $18,000 for a single-family dwelling or a one-family unit in a condominium project, except that such amount may be increased to $21,000 in the case of a family with five or more persons.

(b) $24,000 for a two-family dwelling.

§ 235.30 Increased mortgage amount—high cost areas.

In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase the dollar amount limitations set forth in § 235.25 to an amount not to exceed the following:

(a) $21,000 for a single-family dwelling or a one-family unit in a condominium project, except that such amount may be increased to $24,000 in the case of a family with five or more persons.

(b) $30,000 for a two-family dwelling.

§ 235.35 Mortgagor's investment.

(a) At the time a mortgage is insured, the mortgagor shall have paid on account of the property either of the following amounts:

(1) $200, if the mortgagor's adjusted annual income is not in excess of 135 percent of the maximum limits established in the area for initial occupancy in public housing dwellings.

(2) 3 percent of the Commissioner's estimate of the cost of acquisition, if the mortgagor's adjusted annual income exceeds 135 percent of the maximum limits established in the area for initial occupancy in public housing dwellings.

(b) The mortgagor's payment of the investment prescribed in paragraph (a) shall be in cash or its equivalent. This investment may be applied for the payment of closing costs and initial payments for taxes, hazard insurance premiums, mortgage insurance premiums, and other prepaid expenses.

§ 235.40 Late charge.

A late charge may be collected by the mortgagee for each payment more than 15 days in arrears, but such charge shall not exceed 2 cents for each dollar of the mortgagor's share of the monthly payment. Such charge shall be separately billed to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the assistance payment.

§ 235.45 Eligibility requirements for purchaser from rehabilitation sales project.

(a) Except as provided in this section, all of the provisions of this subpart shall apply to the insurance under section 235(j)(4) of the National Housing Act of a mortgage financing the purchase by a lower income person from a rehabilitation sales project of a single or two-family dwelling or a family unit in a condominium project. The rehabilitation sales project shall be financed with a mortgage insured under either section 221(h)(1) of the National Housing Act or section 235(j)(1) of such Act.

(b) The mortgagee shall not be required to pay an application or commitment extension fee.

(c) The mortgage shall comply with each of the following requirements:

(1) It shall involve a principal obligation in an amount not exceeding that portion of the unpaid balance of the project mortgage which is allocable to the dwelling or family unit being purchased.

(2) It shall bear interest at the maximum rate permitted under § 203.20 at the time the commitment for insurance was issued for the project mortgage.

(3) It shall be limited to the term of the project mortgage remaining at the time of the purchase.

(d) The purchase price of the dwelling or family unit shall equal that portion of the unpaid balance of the project mortgage which is allocable to the dwelling or family unit plus such additional amount, not less than $200, as the Commissioner may determine to be reasonable. This additional amount may be paid in cash or its equivalent, and may be applied in whole or in part toward closing costs. It shall be paid by the mortgagor in lieu of the minimum investment prescribed in § 235.25.

(e) The mortgagor shall be required to have an annual income within the limits prescribed by the Commissioner, but the asset limits prescribed for mortgagors under mortgages insured pursuant to §§ 235.1 through 235.40 shall not be applicable.

Subpart B—Contract Rights and Obligations—Homes for Lower Income Families

§ 235.201 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 235 of the National Housing Act, except the following provisions:

Sec.

203.305 Open-end advance subject to open-end charge.

203.306 Method of payment of open-end charge.

203.307 Calculation, amount, and due date of open-end charge.

203.308 Duration of open-end charge.

203.309 Pro rata payment of open-end charge.

Sec.
203.357 Deed in lieu of foreclosure.
203.379 Adjustment for fire, flood, earthquake, or tornado damage.
203.380 Certificate of property condition.
203.389 Waived title objections.
203.400 Method of payment.
203.420 Nature of Mutual Mortgage Insurance Fund.
203.421 Allocation of Mutual Mortgage Insurance Fund income or loss.
203.422 Rights and liability under Mutual Mortgage Insurance Fund.
203.423 Distribution of distributive shares.
203.424 Maximum amount of distributive shares.
203.425 Finality of determination.
203.426 Inapplicability to housing in older, declining urban areas.
203.440 through 203.495 Insured home improvement loans.

(b) The term "property" or "each family dwelling unit" as used in §§ 203.251 through 203.435 of this chapter (Part 203, Subpart B) shall, when used in connection with a family unit in a condominium, be construed to include "a one-family unit and the undivided interest in the common areas and facilities".

§ 235.205 Deed in lieu of foreclosure.

All of the provisions of § 203.357 of this chapter relating to the acceptance of a deed in lieu of foreclosure shall apply to mortgages insured under this part, except that where a family unit in a condominium is involved, the deed in lieu of foreclosure may be accepted only if the mortgagee establishes to the satisfaction of the Commissioner that there are no unpaid assessments owed to the association or cooperative of owners.

§ 235.210 Request by Commissioner for assignment of mortgage.

The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which assistance payments are being made pursuant to the provisions of § 235.301 et seq. If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered as the date of default for the purposes of computing the insurance benefits.

§ 235.215 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

§ 235.220 Condition of property.

All of the provisions of § 203.379 relating to the adjustment of the insurance claim for fire, flood, earthquake or tornado damage and all of the provisions of § 203.380 requiring the mortgagee to certify as to the condition of the property shall apply to mortgages insured under this subpart with the exception of mortgages involving condominium units. Sections 235.230 and 235.235 contain the comparable provisions applicable to mortgages involving condominium units.

SPECIAL PROVISIONS APPLICABLE ONLY TO MORTGAGES INVOLVING CONDOMINIUM UNITS

§ 235.221 Waived title objections.

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

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

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

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

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

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

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

§ 235.225 Changes in plan of apartment ownership.

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

§ 235.230 Condition of multifamily structure.

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

(1) The property may be repaired prior to its conveyance or prior to the assignment of the mortgage to the Commissioner.

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

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

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

(2) The fire insurance company shall have later canceled or refused to renew the policy.

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

§ 235.235 Certificate or statement of condition.

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

(1) Certify that the conditions of § 235.230(a) have been met; or

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

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

§ 235.240 Assessment of taxes.

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

§ 235.245 Certificate of tax assessment.

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

§ 235.250 Cancellation of property insurance.

The provisions of § 203.382, relating to the cancellation of hazard insurance

upon filing for record of the deed to the Commissioner, are incorporated by reference and shall apply to hazard insurance policies carried solely for the family unit.

Subpart C—Assistance Payments—Homes for Lower Income Families

§ 235.301 Definitions.

The definitions contained in § 235.5 shall apply to this subpart. In addition the term "assistance payment" means that portion of a homeowner's or cooperative member's monthly mortgage payment which the Commissioner becomes obligated to pay under an assistance payment contract.

§ 235.305 Contract for assistance payments.

This subpart shall constitute the contract between the mortgagee and the Commissioner for assistance payments pursuant to section 235(b) of the National Housing Act.

§ 235.310 Execution of assistance payment contract.

(a) *Homeowners.* The issuance of a mortgage insurance certificate pursuant to § 235.1 et seq. shall also constitute the execution of the assistance payment contract with respect to the mortgage being insured.

(b) *Cooperative members.* The issuance of a certificate approving an application filed on behalf of a cooperative member shall constitute the execution of the assistance payment contract with respect to member named in the certificate.

§ 235.315 Qualified homeowners.

To qualify for assistance payments, the homeowner shall have, at the time of application for assistance, assets and an adjusted annual income which come within the limits established by the Commissioner, and shall be a mortgagor under a mortgage insured or to be insured pursuant to Subparts A and B of this part.

§ 235.320 Limitation of sales price.

To qualify for assistance payments, the homeowner shall not have paid in connection with the purchase of the property with respect to which assistance payments are to be made more than the Commissioner's estimate of value of such property.

§ 235.325 Qualified cooperative members.

To qualify for assistance payments, the cooperative member shall have, at the time of application for assistance, assets and an adjusted annual income which come within the limits established by the Commissioner, and shall be one of the following:

(a) A member of a cooperative association which operates a housing project which has been constructed or substantially rehabilitated not more than two years prior to the filing of the application for assistance payments and which is financed with a mortgage insured under §§ 213.1 through 213.280 of this chapter. The dwelling unit occupied by the cooperative member shall have had no previous occupant.

(b) A member of a cooperative association which operates an existing housing project financed with a mortgage insured under §§ 213.1 through 213.280 of this chapter, if such member has acquired membership and occupancy rights from one who was receiving assistance payments.

(c) A member of a cooperative association which operates an existing housing project financed with a mortgage insured under §§ 213.1 through 213.280 of this chapter, if such member meets one of the following qualifications:

(1) The member shall qualify as a displaced family.

(2) The member's family shall include five or more minor persons.

(3) The member's family shall have been occupying low-rent public housing at the time the application for assistance payments is filed.

§ 235.330 Cooperative units eligible for assistance payments.

The maximum amount of the mortgage attributed to the dwelling unit of the cooperative member shall not exceed $18,000 except that such amount may be increased to $21,000 in the case of a family of five or more persons. These amounts may be increased to $21,000 and $24,000 respectively, in any geographical area where the Commissioner finds the cost levels so require.

§ 235.335 Assistance payments and handling charges.

(a) The assistance payment on behalf of a mortgagor shall be the lesser of the following:

(1) The difference between 20 percent of the homeowner's or cooperative member's adjusted monthly income and the required monthly payment under the mortgage for principal, interest, taxes, insurance, and mortgage insurance premium.

(2) The difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore an interest rate of one percent.

(b) The assistance payment on behalf of a cooperative member shall be in an amount computed by using the formula prescribed in paragraph (a) of this section and applying the cooperative member's proportionate share of the obligation under the project mortgage to the items set forth in the formula.

(c) In addition to the assistance payment referred to in paragraphs (a) and (b) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expense in handling the mortgage.

§ 235.340 Time of payment.

The assistance payment shall be due on the first day of each month and shall be paid upon the receipt of a billing, on a form prescribed by the Commissioner, from the mortgagee or its authorized agent.

§ 235.345 Term of assistance contract.

(a) *Homeowners.* The term of the assistance payment contract shall begin on the date of disbursement of mortgage proceeds as shown on the commitment for insurance and shall continue until the contract is terminated pursuant to § 235.375.

(b) *Cooperative members.* The term of the assistance payment contract shall begin on the date of issuance of a certificate approving an application filed on behalf of a cooperative member and shall continue until the contract is terminated pursuant to § 235.375.

§ 235.350 Mortgagor's biennial recertification.

The mortgagee shall obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a biennial recertification as to occupancy, employment, income, and family composition. This recertification shall be on a form prescribed by the Commissioner.

§ 235.355 Mortgagor's optional recertification.

Upon request of the mortgagor or cooperative member, the mortgagee may accept (during the first year following the execution of the assistance payment contract or during the first year following a biennial recertification) a recertification as to occupancy, employment, income, and family composition. This recertification shall be on a form prescribed by the Commissioner.

§ 235.360 Adjustments in assistance payments.

The mortgagee shall make appropriate adjustments in the amount of the requested assistance payments to reflect changes shown in the biennial or optional recertification of the homeowner or cooperative member. These adjustments shall not be retroactive. In the case of a biennial recertification, the adjustment shall apply only to the assistance payment for the next 2-year period. In the case of an optional recertification, the adjustment shall apply only to the assistance payment at the beginning of the second year of the current 2-year period.

§ 235.365 Mortgagee records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments, the mortgage assistance payments received from the Commissioner, and the biennial recertifications of financial status from the homeowner or mortgagor. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

§ 235.370 Effect of assignment of mortgage with an assistance payment contract.

Where a mortgage covered by an assistance payment contract is sold to another approved mortgagee, the buyer shall succeed to all the rights and become bound by all the obligations of the seller under such contract.

§ 235.375 Termination of the assistance payment contract.

(a) The assistance payment contract shall be terminated when any one of the following events occurs:

(1) The contract of mortgage insurance is terminated, except where the mortgage has been assigned to the Commissioner.

(2) The homeowner or cooperative member ceases to occupy the property, except in the following instances:

(i) Where the property is purchased by a homeowner who assumes the mortgage obligation and who meets the income and asset requirements prescribed by the Commissioner.

(ii) Where the cooperative member transfers his membership and occupancy rights to a new member who meets the income and asset requirements prescribed by the Commissioner.

(3) The mortgagee determines that the homeowner or cooperative member ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of his income.

(4) Foreclosure is instituted or the property is acquired by means other than foreclosure by the mortgagee or the Commissioner.

(b) Upon termination of the assistance payment contract, the payment due on the first day of the month in which the termination occurs shall be the last payment to which the mortgage shall be entitled.

(c) The termination of the assistance payment contract, where the mortgage insurance contract is not simultaneously terminated, shall have no effect on the mortgage insurance contract.

(d) Where the assistance payment contract is terminated as a result of the institution of foreclosure and the foreclosure action is subsequently dismissed, the assistance payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, assistance payments will be made to the mortgagee for those months during which such payments were suspended.

§ 235.499 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under an existing contract for assistance payments.

Subpart D—Eligibility Requirements—Rehabilitation Sales Projects

§ 235.501 Incorporation by reference.

(a) All of the provisions of Subpart C, Part 221 of this chapter, concerning eligibility requirements of moderate income projects under section 221 of the National Housing Act, apply with full force and effect to rehabilitation sales projects insured under section 235(j) of the National Housing Act, except the following provisions:

Sec.
221.501 Certificate by Secretary to Commissioner.
221.502 Application.
221.503 Application fee.
221.504 Commitment fee.
221.505 Inspection fee.
221.506 Fees on increases.
221.510 Eligible mortgagors.
221.514 Maximum mortgage amounts.
221.515 Adjusted mortgage amount—rehabilitation projects.
221.518 Maximum interest rate.
221.523 Application of payments.
221.524 Prepayment privileges.
221.525 Late charges.
221.531 Supervision applicable to general mortgagors.
221.532 Supervision applicable to limited distribution mortgagors.
221.533 Supervision applicable to cooperative and investor sponsor mortgagors.
221.534 Supervision applicable to cooperative mortgagors.
221.535 Supervision applicable to investor sponsor mortgagors.
221.535a Supervision applicable to builder-seller mortgagors.
221.536 Occupancy requirements applicable to all mortgagors.
221.537 Additional occupancy requirements; preferred purchasers or tenants.
221.540 Financial requirements.
221.543 Advance amortization.
221.545 Development of property.
221.546 Commercial and community facilities.
221.559 Eligibility of miscellaneous type mortgagors.
221.559b Eligibility for insurance under section 221(j) of mortgage financing purchase of existing project by cooperative.
221.560 Eligibility of refinanced mortgage.
221.575 Protection of work in process.

(b) For the purposes of this subpart, all references in Part 221 of this chapter to a rehabilitation sales mortgagor shall be construed to refer to a mortgagor under a mortgage insured pursuant to the provisions of this subpart.

§ 235.505 Definition of "nonprofit mortgagor".

As used in this subpart, the term "nonprofit mortgagor" shall mean a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the Commissioner finds is neither controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be subject to such regulation or supervision as to rents, charges and methods of operation as the Commissioner deems necessary to effectuate the purposes of this subpart.

§ 235.510 Application.

(a) An application for insurance of a mortgage on a project shall be submitted to the local FHA office by an approved mortgagee and by the sponsors of the project. Such application shall be on an approved FHA form.

(b) No application shall be considered unless the following requirements are met:

(1) All of the exhibits called for in the application are submitted to the Commissioner.

(2) The Commissioner has allocated to the project funds for assistance payments.

(3) Fees as required in § 235.520 are remitted.

§ 235.515 Special certifications—family unit ownership.

Where the project is to involve the type of property described in § 235.530(c), the following certification shall be submitted with the application for insurance:

(a) *Mortgagee's certificate.* A certification by the mortgagee that the law of the jurisdiction will permit the project to be converted to a plan of apartment ownership which will meet the requirements of this part.

(b) *Mortgagor's certificate.* A certification by the mortgagor that it intends, upon completion of the project, to commit the ownership of the project to a plan of apartment ownership under which each family unit in the project vidual mortgages insured pursuant to will be eligible for financing under indi- § 235.1 et seq. The mortgagor shall also certify that it intends faithfully and diligently to make all reasonable effort to establish the plan of apartment ownership.

§ 235.520 Application, commitment, and inspection fees.

A combined application, commitment, and inspection fee in the amount of $40 per dwelling unit to be contained in the proposed project shall be paid with the filing of the application. A subsequent application for an increase in the number of units to be contained in the project shall be accompanied by a payment of an additional fee in the amount of $40 for each additional unit.

§ 235.525 Eligible mortgagors.

A mortgage shall be executed by a mortgagor that is a nonprofit organization or a public body or agency and is approved by the Commissioner. Such mortgagor shall engage in the following undertaking:

(a) The purchase of housing and the rehabilitation of such housing, if it is deteriorating or substandard.

(b) The sale of such housing, under terms and conditions satisfactory to the Commissioner, to individuals or families meeting the income criteria prescribed for a mortgagor whose mortgage is insured under § 235.1 et seq.

§ 235.530 Eligible types of property.

To be eligible for insurance, the property shall consist primarily of substandard or deteriorating housing which is to be rehabilitated, but may include one or more existing dwellings or units not requiring rehabilitation. Such property may be located on one or more tracts or parcels which may or may not be contiguous, and shall consist of one of the following types or a combination of such types:

(a) Four or more single-family or two-family dwellings which may be of detached, semidetached, or row construction.

(b) Four or more one-family units in a structure or structures for which a plan of family unit ownership, approved by the Commissioner, is established or is to be established as required in § 235.515.

§ 235.535 Maximum mortgage amount.

(a) The mortgage shall involve a principal obligation not in excess of the Commissioner's estimate of the cost of any rehabilitation plus the lesser of either of the following:

(1) The actual purchase price of the land and improvements.

(2) The Commissioner's estimate of the value of the land and improvements prior to the rehabilitation.

(b) In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 235.540 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

§ 235.545 Application of payments.

(a) The mortgage shall provide that all amounts to be paid monthly by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgage shall further provide that such payment will be applied in the following order:

(1) Premium charges under the contract of insurance.

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

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the monthly payment by the mortgagor shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be cured.

§ 235.550 Late charges.

A late charge may be collected by the mortgagee for each payment to interest or principal more than 15 days in arrears, if provided in the mortgage, but such charges shall not exceed two cents for each dollar of the mortgagor's share of such payment. Such charge shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the assistance payment made by the Commissioner to the mortgagee pursuant to § 235.801 et seq.

§ 235.555 Prepayment privileges.

(a) A mortgage indebtedness may be prepaid in full or in part only with the prior written approval of the Commissioner, except where the prepayment occurs as a result of selling all of the units in the project.

(b) The mortgagee shall not collect any charge for the prepayment of the mortgage in connection with the sale by the mortgagor of units in the project.

(c) If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage and such prepayments are not made in connection with the sale of individual dwelling or family units, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

§ 235.560 Financial requirements.

All of the provisions of § 221.540 of this chapter, relating to the financial requirements where there is to be insurance of advances, shall apply except the working capital deposit prescribed in paragraph (a) of this section shall not be required.

§ 235.565 Rental of housing units.

Pending the sale of the housing units in the project (or in the event the mortgagor is unable to sell any of such units), the mortgagor may rent or lease such units, with the approval of the Commissioner and under such terms and conditions as the Commissioner may require.

Subpart E—Contract Rights and Obligations—Rehabilitation Sales Projects

§ 235.701 Incorporation by reference.

All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 235(j) of the National Housing Act except the following provisions:

Sec.
207.253 Adjusted premium charge.
207.259 Insurance benefits.
207.262 No vested right in fund.

§ 235.705 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

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

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 235.715(b) shall be applicable.

§ 235.710 Request by Commissioner for assignment of mortgage.

(a) The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which assistance payments are being made pursuant to the provisions of § 235.801 et seq., regardless of the default status of such mortgage.

(b) If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

§ 235.715 Payment of insurance benefits.

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

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

(b) When the mortgage is assigned to the Commissioner pursuant to § 235.710 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by

the Commissioner in accordance with the requirements of § 235.705 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with § 207.259 (b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b) (1) (iii) of this chapter, the cash payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256, 207.258(b), and 235.705(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to § 235.710 and the mortgage is not in default at the time of such assignment, the 1 percent deduction prescribed in § 207.259(b) (2) (iv) of this chapter shall not be applicable.

§ 235.720 Adjusted premium charge.

All of the provisions of § 207.253 of this chapter shall apply to mortgages insured under this part, except that no adjusted premium charge or termination charge shall be due where the prepayment of the mortgage or the voluntary termination of the mortgage insurance occurs in connection with the sale of the rehabilitation housing pursuant to § 235.525(b).

Subpart F—Assistance Payments—Rehabilitation Sales Projects

§ 235.801 Assistance payment contract.

This subpart shall constitute the assistance payment contract between the mortgagee and the Commissioner pursuant to section 235(j) (7) of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the assistance payment contract with respect to the mortgage being insured.

§ 235.805 Eligible mortgages.

Assistance payments pursuant to this subpart shall be made only in connection with a mortgage insured under Subparts D and E of this part.

§ 235.810 Term of payments.

(a) The term for which assistance payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date of the Commissioner's final endorsement of the mortgage note for insurance, or such earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the assistance payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of mortgage insurance.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim pursuant to § 207.258(a) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in § 207.258(a) of this chapter, the last day on which the Commissioner should have received the mortgagee's notice shall be deemed the date the Commissioner received such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the Commissioner.

(c) Upon the termination of the assistance payment contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of assistance payments is ended pursuant to subparagraph (2) or (3) of paragraph (b) of this section, the contract for assistance payment may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, assistance payments will be made to the mortgagee for those months during which such payments were suspended.

§ 235.815 Time of payments.

The assistance payment shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its servicer.

§ 235.820 Amount of assistance payments.

(a) The assistance payment to the mortgagee shall be the difference between the following:

(1) The monthly installment for principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly installment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) As individual family units in the project are sold and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is obligated to pay is reduced, proportionate reductions will be made in the mortgage assistance payments.

(c) In addition to the assistance payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

§ 235.825 Application of payments.

The mortgagee shall apply each monthly assistance payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

§ 235.830 Mortgagee records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the assistance payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or Comptroller General of the United States.

§ 235.835 Effect of assignment of mortgage.

In the event a mortgage subject to assistance payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the assistance payments contract.

§ 235.999 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under a contract for assistance payments already in effect or to be put in effect pursuant to the Commissioner's commitment to enter into such contract.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

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236.1 Incorporation by reference.
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236.251 Incorporation by reference.
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236.599 Effect of amendments.

AUTHORITY: The provisions of this Part 236 issued under sec. 211, 52 Stat. 23, as amended, sec. 236, 82 Stat. 498, as amended; 12 U.S.C. 1715b, 1715z-1.

Subpart A—Eligibility Requirements for Mortgage Insurance

§ 236.1 Incorporation by reference.

All of the provisions of Subpart C, Part 221 of this chapter, concerning eligibility requirements of moderate income projects under section 221 of the National Housing Act, apply with full force and effect to multifamily project mortgages insured under section 236 of the National Housing Act, except the following provisions:

Sec.
221.501 Certificate by Secretary to Commissioner.
221.502 Application.
221.503 Application fee.
221.504 Commitment fee.
221.505 Inspection fee.
221.510 Eligible mortgagors.
221.518 Maximum interest rate.
221.519a Mortgage release provisions.
221.523 Application of payments.
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221.531 Supervision applicable to general mortgagors.
221.532 Supervision applicable to limited distribution mortgagors.
221.536 Occupancy requirements applicable to all mortgagors.
221.537 Additional occupancy requirements; preferred purchasers or tenants.
221.542a Accounting for net income.
221.543 Advance amortization.
221.546 Commercial and community facilities.
221.559 Eligibility of miscellaneous type mortgages.
221.560 Eligibility of refinanced mortgages.
221.575 Protection of work in process.

§ 236.2 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Adjusted monthly income" means one-twelfth of the annual family income remaining after making certain exclusions from gross annual income. The following items shall be excluded, in the order listed, from family gross annual income:

(1) 5 percent of such gross annual income, in lieu of amounts to be withheld (social security, retirement, health insurance, etc.).

(2) Any unusual income or temporary income, as defined by the Commissioner.

(3) The earnings of each minor in the family who is living with such family, plus the sum of $300 for each such minor.

(b) "Family" means two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling or unit.

(c) "Gross annual income" means the total income, before taxes and other deductions, received by all members of the tenant's household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments and such other income items as the Secretary considers appropriate.

(d) "Handicapped" means a person who has a physical impairment which:

(1) Is expected to be of long-continued and indefinite duration.

(2) Substantially impedes his ability to live independently.

(3) Is of such nature that his ability to live independently could be improved by more suitable housing conditions.

(e) "Minor" means a person under the age of 21. Such term shall not include a tenant or his spouse.

(f) "Elderly" means a person 62 years of age or older.

(g) "Displacee" means a person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

§ 236.3 Application, commitment, and inspection fees.

All of the provisions of §§ 221.503, 221.504, and 221.505 of this chapter governing application, commitment, and inspection fees shall apply to mortgages insured under this part, except that such fees shall not be required in either of the following instances:

(a) Where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but section 202 funds are not available to make the loan.

(b) Where the project has received a loan under section 202 of the Housing Act of 1959 which is being refinanced, provided, at the time of the application for insurance of the refinancing mortgage under section 236, the project is either in the construction stage or has been completed less than 6 months.

§ 236.5 Application.

(a) An application for issuance of either a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form.

(b) No application shall be considered unless the following requirements are met:

(1) All of the exhibits called for in the application are submitted to the Commissioner.

(2) The Commissioner has allocated to the project contract authority for interest reduction payments.

§ 236.10 Eligible mortgagors.

A mortgage shall be executed by a mortgagor approved by the Commissioner and meeting the following qualifications:

(a) *Nonprofit mortgagors.* The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making f profit or gain for itself or persons identified therewith and which the Commissioner finds is neither controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be subject to such regulation or supervision as to rents, charges and methods of operation as the Commissioner deems necessary to effectuate the purposes of this subpart.

(b) *Builder-seller mortgagors.* The builder-seller mortgagor shall be a special type of mortgagor which is organized to:

(1) Construct or rehabilitate a multifamily project for sale (upon final endorsement) to a private nonprofit corporation meeting the qualifications of paragraph (a). Prior to insurance of the mortgage, the mortgagor shall have entered into a written agreement with such nonprofit corporation to sell the project at a purchase price not to exceed the project's actual cost as certified pursuant to § 221.550 of this chapter.

(2) Operate the project, subject to special controls and requirements of the Commissioner as to rents, charges, rates of return, and methods of operation, until the conveyance to the nonprofit mortgagor.

(3) Operate the project as a limited distribution mortgagor subject to the supervision, controls and requirements prescribed by the Commissioner for such mortgagor, in the event of failure to convey to a nonprofit mortgagor either at final endorsement or within such additional period as may be agreed to in writing by the Commissioner.

(c) *Limited distribution mortgagor.* The limited distribution mortgagor shall be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the Commissioner) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation in such form and manner as is satisfactory to the Commissioner to effectuate the purposes of this subpart.

(d) *Cooperative and investor sponsor mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation which restricts permanent occupancy of the project to the members of the corporation who must meet membership eligibility requirements approved by the Commissioner.

(2) The investor sponsor mortgagor shall be a special type of mortgagor which is organized to:

(i) Construct or rehabilitate a multifamily project to be transferred to a

cooperative mortgagor within 2 years from the date of completion.

(ii) Operate the project until 2 years from the date of completion or until the conveyance to the cooperative mortgagor, whichever occurs sooner, subject to the controls and requirements of the Commissioner.

(iii) Operate the project as a limited distribution mortgagor subject to the controls and requirements of the Commissioner, in the event of failure to convey to a cooperative mortgagor within the 2-year period.

(3) Such a mortgagor will be regulated or restricted by the Commissioner as to rents or sales, charges, rate of return, and methods of operation in such manner as will effectuate the purposes of this subpart and protect the consumer interest.

§ 236.15 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

§ 236.20 Mortgage release provisions.

A mortgage insured under this subpart may provide that, at any time after final endorsement, the property covered by the mortgage may be released, in whole or in part, with the approval of the Commissioner and under such terms and conditions as he may prescribe, upon payment of the portion of the unpaid balance of the mortgage allocable to the property released.

§ 236.25 Application of payments.

(a) The mortgage shall provide that all amounts to be paid monthly by the mortgagor to the mortgagee shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The mortgage shall further provide that such payment will be applied in the following order:

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

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

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

(b) Any deficiency in the amount of the monthly payment by the mortgagor shall constitute an event of default. The mortgage shall further provide for a grace period of 30 days, within which time the default must be cured.

§ 236.30 Prepayment privileges.

(a) *Prepayment in full*—(1) *Without prior Commissioner consent.* A mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated without the prior consent of the Commissioner where the mortgagor is a limited distribution type and either of the following conditions is met:

(i) If the prepayment occurs after the expiration of 20 years from the date of final insurance endorsement of the mortgage, provided the mortgagor is not receiving payments from the Commissioner under a rent supplement contract executed pursuant to the provisions of §§ 5.1 et seq. of this title.

(ii) If the prepayment occurs as a result of the sale of the project to a cooperative or private nonprofit corporation or association, provided the sale is financed with a mortgage insured pursuant to § 236.40(d).

(2) *With prior Commissioner consent.* In all cases, except those outlined in subparagraph (1) of this paragraph, a mortgage indebtedness shall not be prepaid in full and the Commissioner's controls shall not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Partial prepayments.* With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

(c) *Optional provision.* The mortgage may, if required by the mortgagee, contain a provision that, prior to the maturity and with the approval of the Commissioner, partial prepayments may be made after 30 days' written notice to the mortgagee on any principal payment date. If prepayments are made in any calendar year in excess of 15 percent of the original face amount of the mortgage, the mortgagee will be permitted to collect such reasonable charge on such excess as is agreed upon between the mortgagor and the mortgagee.

(d) *Prepayment in connection with sale of units.* With the prior written approval of the Commissioner, the mortgagor may sell the individual dwelling units in the project to lower income, elderly, or handicapped purchasers. The mortgagee shall not collect any charge for the prepayment of the mortgage in connection with the sale of such units.

§ 236.35 Late charge.

A late charge may be collected by the mortgagee for each payment to interest or principal more than 15 days in arrears, if provided in the mortgage, but such charge shall not exceed 2 cents for each dollar of the mortgagor's share of such payment. Such charge shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment. Such charge shall not be included in the interest reduction payment made by the Commissioner to the mortgagee pursuant to § 236.501 et seq.

§ 236.40 Eligibility of miscellaneous mortgages.

(a) *Transfer.* A mortgage initially insured under Part 221, Subpart C of this chapter, which has been approved for the below market interest rate (§ 221.518(b) of this chapter) and which has not received the Commissioner's final endorsement, may be insured under this subpart. The principal amount of such mortgage shall not exceed that which would be applicable if the mortgage were to be insured under Part 221.

(b) *Refinancing—in general.* A mortgage given to refinance an existing mortgage insured under the Act may be insured under this subpart pursuant to section 223(a)(7) of the Act. The new mortgage shall be limited in amount and in term as follows:

(1) The principal of the new mortgage shall not exceed the lowest of these amounts:

(i) The original principal amount of the existing insured mortgage.

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added—

(a) The outstanding indebtedness incurred in connection with capital improvements made to the property which are acceptable to the Commissioner.

(b) The costs, as determined by the Commissioner, of improvements, upgrading or additions required to be made to the property.

(c) Loan closing charges.

(iii) The Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property, except for general or limited distribution mortgagors when the amount shall not exceed 90 percent of the Commissioner's estimate of the value of the property after completion of the repairs, improvements or additions to the property.

(2) The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that it may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determined that the insurance of the mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage.

(c) *Refinancing—existing project under section 202 of the Housing Act of 1959.* A mortgage given to refinance a loan which was made under section 202 of the Housing Act of 1959 may be insured under this subpart, if the application for insurance is filed with the Commissioner prior to the date of project completion, or within such reasonable time thereafter as the Commissioner may allow.

(d) *Purchase.* In the case of a project financed with a mortgage insured under this subpart which involves a mortgagor other than a cooperative or a private nonprofit corporation or association and which is sold to a cooperative or a nonprofit corporation or association, a mortgage given to finance the purchase may be insured under this subpart. The insurance of such mortgage shall be governed by the following:

(1) The amount of the mortgage shall not exceed the lesser of the amounts determined by applying the formulas in subdivision (i) or (ii) of this subparagraph as follows:

(i) An amount, the debt service of which can be met from project income remaining after payment of all operating expenses, taxes, and required services, provided the project is operated on a nonprofit basis and the rental charges in effect at the time of purchase are not raised.

(ii) The project's actual cost at the time of completion (as determined by the Commissioner) or the project's fair market value for residential purposes as determined by the Commissioner on the basis of operating the project without the benefit of any interest reduction payments or rent supplement payments and without the controls by the Commissioner over the project imposed by the provisions in this subpart, whichever amount is the greater.

(2) Subject to limitations prescribed in subparagraph (1) of this paragraph, it is intended that the mortgage will provide an amount which will enable the seller of the project to realize a net amount out of the sales proceeds sufficient to recover its investment and to retire the outstanding mortgage.

(3) The term of the mortgage may exceed the remaining term of the original mortgage on the project, but in no event may it exceed the Commissioner's estimate of the remaining economic life of the project.

§ 236.45 Commercial and community facilities.

(a) The project may include such nondwelling commercial and community facilities as the Commissioner determines will be adequate and appropriate to serve the occupants and the surrounding neighborhood, provided the project remains predominantly residential and any nondwelling facility included in the mortgage is found by the Commissioner to contribute to the economic feasibility of the project. In approving such facilities, the Commissioner shall give consideration to the possible effect of the project on other business enterprises in the community.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities and other essential service facilities for use by elderly or handicapped families.

§ 236.50 Supervision applicable to limited distribution mortgagors.

(a) Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. The amount of any allowable distribution, or disbursement from surplus cash, shall not exceed in any 1 fiscal year more than 6 percent of the mortgagor's initial equity investment in the projects, as determined by the Commissioner.

(b) No dividends or other distributions shall be declared or made except out of surplus cash available and remaining after:

(1) The payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Commissioner.

(ii) All amounts required to be deposited in the reserve fund for replacements.

(iii) All obligations of the project (other than the mortgage insured or held by the Commissioner) unless funds for payment are set aside or deferment of payment has been approved by the Commissioner.

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project.

(ii) All tenant security deposits held.

(c) The right to any allowable distribution or disbursement from surplus cash shall be cumulative.

(d) No distribution of any kind may be made from borrowed funds.

§ 236.55 Rental charges.

(a) *Approved rental charges.* The mortgagor shall, with the approval of the Commissioner, establish for each dwelling unit the following:

(1) A basic monthly rental charge determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum.

(2) A fair market monthly rental charge determined on the basis of operating the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage.

(b) *Monthly rental charge.* The monthly rental for each dwelling unit shall be 25 percent of the tenant's adjusted monthly income, except that the monthly rental shall not be less than the basic rental nor more than the fair market rental charge. In the event of any change in a tenant's income, the monthly rental charge shall be adjusted by the mortgagor.

(c) *Application of terms.* In the case of a cooperative project, the term "tenant" as used in this subpart shall mean a member of a cooperative and the term "rental charge" shall mean the charges under the occupancy agreement of members of the cooperative.

§ 236.60 Excess rental charges.

The mortgagor shall agree to pay monthly to the Commissioner all rental charges collected in excess of the basic rental charges.

§ 236.65 Mortgagor's oath as to selection of tenants and transient occupancy.

The mortgagor shall certify under oath to the Commissioner, that as long as the Commissioner is the insurer, holder or reinsurer of the mortgage, the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family because there are children in the family.

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term "rental for transient or hotel purposes" shall mean (1) rental for any period less than 30 days, or (2) except in the case of a project designed primarily for occupancy by elderly or handicapped persons, any rental which includes the provision of customary hotel services such as room service for food and beverages, furnishing and laundering of linens, maid service and bellboy service.

(c) Sell the project, unless the purchaser also agrees to comply with the requirements of paragraphs (a) and (b) of this section.

§ 236.70 Occupancy requirements.

(a) *Initial occupancy.* Initial occupancy of the project by tenants who are unable to pay the fair market rental shall be restricted to those determined by the mortgagor as meeting the income requirements established by the Commissioner, and who are one of the following:

(1) A family.

(2) An elderly person.

(3) A displacee.

(4) A handicapped person.

(5) A single person who is less than 62 years of age: *Provided,* That occupancy by this category of tenants or members shall be limited to 10 percent of the dwelling units in the project.

(b) *Projects designed for displacees, or elderly, or handicapped.* In a project designed for displacees, or elderly, or handicapped, occupancy may be restricted to that category of persons for whom the project was designed and who meet the income requirements established by the Commissioner.

(c) *Preference for military personnel and displacees.*

(1) Whenever the Commissioner determines that a project, because of its location or other considerations, could ordinarily be expected to substantially serve the family needs of military personnel who are serving on active duty and meet the income requirements established by the Commissioner, such preference for occupancy shall be afforded to the family of such military personnel as the Commissioner determines is appropriate.

(2) In all projects preference or priority to occupy dwelling units shall be given to displacees provided that in a project designed for the handicapped or the elderly, preference for displacees shall be limited to those who are within the category for whom the project was designed.

(d) *Recertification of income.* The mortgagor shall obtain from each tenant

or cooperative member who is not paying the fair market rental a biennial recertification of family income.

§ 236.75 Form of lease and occupancy agreement.

A tenant who is to pay less than the fair market rental shall be required to execute a lease in a form approved by the Commissioner. A cooperative member shall be required to execute an occupancy agreement in a form approved by the Commissioner, regardless of the rent he is paying.

§ 236.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations for Mortgage Insurance

§ 236.251 Incorporation by reference.

All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to mortgages insured under section 236 of the National Housing Act except the following provisions:

Sec.
207.252 First, second and third premiums.
207.253 Adjusted premium and termination charges.
207.259 Insurance benefits.
207.262 No vested right in fund.

§ 236.252 First, second, and third mortgage insurance premiums.

All of the provision of § 207.252 of this chapter governing the first, second, and third mortgage insurance premiums shall apply to mortgages insured under this part, except that where an application for a loan under section 202 of the Housing Act of 1959 has been filed previously in connection with the project, but it is being financed with a mortgage insured under this part because funds are not available to make the section 202 loan, the mortgage insurance premium due and payable between the dates of initial and final insurance endorsement shall be at the rate of one-fourth of one percent per annum of the average outstanding principal obligation of the mortgage and such premiums shall be prorated for any fractional part of a year. Following final endorsement, the mortgage insurance premium shall be increased to one-half of 1 percent and shall be paid as provided in § 207.252.

§ 236.255 Forbearance relief.

(a) In a case where the mortgage is in default, the mortgagor and the mortgagee may enter into a forbearance agreement for the reduction or suspension of the mortgagor's regular mortgage payments for a specified period of time, if the Commissioner determines that the default was due to circumstances beyond the mortgagor's control and that the mortgage probably will be restored to good standing within a reasonable period of time. Such determination shall be evidenced by the Commissioner's written approval of the forbearance agreement.

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

(c) If the mortgagor fails to meet the requirements of a forbearance agreement or to cure the default under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the mortgagee shall notify the Commissioner of such failure. Within 45 days thereafter, unless a modification or extension of the forbearance agreement has been approved by the Commissioner, the mortgagee shall notify the Commissioner of its election to file an insurance claim and of its election to either assign the mortgage to the Commissioner or acquire and convey title to the property to the Commissioner. If the mortgage is assigned to the Commissioner, the special insurance benefits prescribed in § 236.265(b) shall be applicable.

§ 236.260 Request by Commissioner for assignment of mortgage.

The mortgagee shall, when requested by the Commissioner, assign to the Commissioner a mortgage on which interest reduction payments are being made pursuant to the provisions of § 236.501 et seq. If the mortgage is not in default when the Commissioner requests its assignment, the first day of the month following the Commissioner's request shall be considered the date of default.

§ 236.265 Payment of insurance benefits.

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

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

(b) When the mortgage is assigned to the Commissioner pursuant to § 236.260 or is assigned in a case where the mortgagor fails to comply with the requirements of a forbearance agreement approved by the Commissioner in accordance with the requirements of § 236.255 or is assigned in a case where the mortgagor fails to cure the default at the expiration of the forbearance period, the insurance benefits shall be paid in cash and shall be computed in accordance with § 207.259(b) of this chapter, except that in lieu of the allowance for debenture interest in § 207.259(b)(1)(iii) of this chapter, the payment shall include the amount of the unpaid accrued mortgage interest computed to the date the assignment of the mortgage to the Commissioner is filed for record. In addition, an amount shall be included equivalent to the debenture interest which would have been earned from the date the mortgage assignment was filed for record to the date the cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256, 207.258(b), and 236.255(c) of this chapter within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), such amount shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(c) Where the assignment of the mortgage is made pursuant to § 236.260 and the mortgage is not in default at the time of such assignment, the one percent deduction prescribed in § 207.259(b)(2)(iv) of this chapter shall not be applicable.

§ 236.270 Adjusted premium charge.

All of the provisions of § 207.253 of this chapter shall apply to mortgages insured under this part, except that no adjusted premium charge or termination charge shall be due when the prepayment of the mortgage or the voluntary termination of the mortgage insurance occurs in connection with the sale of all of the housing units in the project and their release from the project mortgage.

Subpart C—Interest Reduction Payments

§ 236.501 Interest reduction payments contract.

This subpart shall constitute the interest reduction payment contract between the mortgagee and the Commissioner with respect to a mortgage insured under section 236 of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the interest reduction payment contract with respect to the mortgage being insured.

§ 236.505 Eligible mortgages.

Interest reduction payments pursuant to this subpart shall be made only in connection with a mortgage which is insured under Subparts A and B of this part.

§ 236.510 Term of payments.

(a) The term for which interest reduction payments shall be made shall begin on the following dates:

(1) With respect to a mortgage involving insurance of advances, on the date the Commissioner finally endorses the mortgage note for insurance or such

earlier date as may be established by the Commissioner.

(2) With respect to a mortgage insured upon completion, the date on which the Commissioner endorses the mortgage note for insurance.

(b) The term of the interest reduction payments shall end upon the occurrence of one of the following events:

(1) The termination of the contract of insurance, except where the mortgage has been assigned to the Commissioner.

(2) The Commissioner's receipt of the mortgagee's notice of intention to file an insurance claim and to acquire and convey title to the Commissioner pursuant to § 207.258(c) of this chapter. In the event the mortgagee fails to provide the Commissioner with such notice of intention within the time specified in § 207.258 (a) of this chapter, the last day on which the Commissioner should have received the mortgagor's notice shall be deemed the date the Commissioner receives such notice.

(3) At the discretion of the Commissioner, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the Commissioner.

(c) Upon termination of the interest reduction payments contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the mortgagee shall be entitled.

(d) Where the term of interest reduction payments is ended pursuant to subparagraph (2) or (3) of paragraph (b) of this section, such interest reduction payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, interest reduction payments will be made to the mortgagee for those months during which such payments were suspended.

§ 236.515 Time of payments.

The interest reduction payments shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the mortgagee or its authorized agent.

§ 236.520 Amount of payments.

(a) The interest reduction payment to the mortgagee shall be in an amount not exceeding the difference between the following:

(1) The monthly installment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly payment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(b) Where individual family units in the project are sold, subject to a plan approved by the Commissioner, and as the principal amount of the mortgage is reduced by payment of the portion of the mortgage attributable to the sold units and as the amount of the mortgage payments which the mortgagor is obligated to pay is reduced, proportionate reductions will be made in the interest reduction payments.

(c) In addition to the interest reduction payment referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the mortgagee for its expenses in servicing the mortgage.

§ 236.525 Application of payments.

The mortgagee shall apply each monthly interest reduction payment, together with the mortgagor's monthly payment, to the items and in the order set out in the mortgage.

§ 236.530 Mortgagee records.

The mortgagee shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the interest reduction payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

§ 236.535 Effect of assignment of mortgage.

In the event a mortgage subject to interest reduction payments is assigned to another approved mortgagee, the assignee shall thereupon succeed to all the rights and obligations of the assignor under the interest reduction contract.

§ 236.599 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but no such amendment shall adversely affect the interests of a mortgagee under a contract for interest reduction payments already in effect or to be put into effect pursuant to the Commissioner's commitment to enter into such contract.

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

Subpart A—Eligibility Requirements

Sec.
237.1 Scope of subpart.
237.5 Incorporation by reference.
237.15 Credit requirements.
237.20 Eligible property.
237.25 Income criteria.
237.30 Maximum mortgage amount.

Subpart B—Contract Rights and Obligations

237.251 Incorporation by reference.
237.260 Method of paying insurance benefits.

Subpart C—Assistance Payments—Homes for Low and Moderate Income Families

237.301 Incorporation by reference.
237.305 Application for assistance payments.
237.310 Execution of assistance payment contract.

AUTHORITY: The provisions of this Part 237 issued under secs. 203, 211, 237, 52 Stat. 10, 23, 82 Stat. 485; 12 U.S.C. 1709, 1715b, 1715z-2.

Subpart A—Eligibility Requirements

§ 237.1 Scope of subpart.

Mortgage insurance under section 237 of the National Housing Act is provided under this section for mortgages financing the purchase of a single family home by a low or moderate income family that is unable to meet the credit requirements for mortgages insured under section 203, 220, 221, or 234 of the Act, if the mortgage meets the special requirements of this subpart.

§ 237.5 Incorporation by reference.

To be eligible for insurance under this subpart, a mortgage shall meet all of the eligibility requirements for insurance under §§ 203.1 et seq. (Part 203, Subpart A) of this chapter; §§ 220.1 et seq. (Part 220, Subpart A) of this chapter; §§ 221.1 et seq. (Part 221, Subpart A) of this chapter; or §§ 234.1 et seq. (Part 234, Subpart A) of this chapter, except that the mortgage shall comply with the special requirements of this subpart.

§ 237.15 Credit requirements.

The mortgage shall be executed by a mortgagor who the Commissioner has determined would not be an acceptable credit risk for mortgage insurance purposes under one of the subparts referred to in § 237.5, but who would be a reasonably satisfactory credit risk and acceptable for insurance under this subpart. The determination of unacceptability for mortgage insurance under one of the referenced subparts shall be based on the mortgagor's credit standing, debt obligations, total annual income, or income characteristics. The determination of acceptability for mortgage insurance under this subpart shall be based on a finding by the Commissioner that the mortgagor should be able to meet his obligations under the insured mortgage if he receives budget, debt management, and related counseling.

§ 237.20 Eligible property.

The mortgage shall be given to finance the purchase of a single family dwelling or a family unit in a condominium.

§ 237.25 Income criteria.

The mortgage shall be executed by a mortgagor who meets the income criteria established by the Commissioner for low and moderate income families.

§ 237.30 Maximum mortgage amount.

The mortgage shall not exceed the smallest of the following amounts:

(a) The applicable dollar limits of the subpart under which the mortgage would otherwise be eligible for insurance.

(b) $18,000 or $21,000 in any geographical area where the Commissioner finds that cost levels so require.

(c) A principal amount which when amortized will result in monthly payments consisting of principal, interest, mated real estate taxes, the aggregate of mortgage insurance premiums, and estiwhich will not exceed 25 percent of the mortgagor's income. For the purposes of determining such 25 percent, the mortgagor's income shall be computed

either as his average monthly income during the year prior to the date of the application for mortgage insurance or as his average monthly income during the 3 years prior to such application, whichever amount is the greater.

Subpart B—Contract Rights and Obligations

§ 237.251 Incorporation by reference.

(a) Mortgages insured under section 237 of the Act shall be governed by the provisions covering contract rights and obligations, as they respectively relate to the several mortgage insurance programs set forth in § 237.3, except that the foregoing regulations concerning mutuality of an insurance fund shall not apply and the mortgage insurance shall be the obligation of the Special Risk Insurance Fund.

(b) For the purposes of this subpart, all of the references in §§ 203.251 et seq. (Part 203, Subpart B) of this chapter; §§ 220.251 et seq. (Part 220, Subpart B) of this chapter; §§ 221.251 et seq. (Part 221, Subpart B) of this chapter; or §§ 234.251 et seq. (Part 234, Subpart B) of this chapter to:

(1) Section 203, 220, 221, or 234 of the Act shall be construed to refer to section 237 of the Act.

(2) The Mutual Mortgage Insurance Fund or the General Insurance Fund shall be construed to refer to the Special Risk Insurance Fund.

§ 237.260 Method of paying insurance benefits.

If the application for insurance benefits is acceptable to the Commissioner, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

Subpart C—Assistance Payments—Homes for Low and Moderate Income Families

§ 237.301 Incorporation by reference.

(a) All of the provisions of Subpart C, Part 235 of this chapter concerning assistance payments for lower income families apply to assistance payments for mortgages insured under section 237 of the National Housing Act, except the following provisions:

Sec.
235.310 Execution of assistance payment contract.
235.325 Qualified cooperative members.
235.330 Cooperative units eligible for assistance payments.

(b) For the purposes of this subpart, all references in Part 235 of this chapter to:

(1) Section 235 of the Act shall be construed to refer to section 237 of the Act.

(2) This subpart shall be construed to refer to Subpart C of this Part 237.

(3) Subparts A and B of this part shall be construed to refer to Subparts A and B of this Part 237.

§ 237.305 Application for assistance payments.

Any approved mortgagee may submit, on a form prescribed by the Commissioner, an application for assistance payments in accordance with the provisions of this subpart.

§ 237.310 Execution of assistance payment contract.

The issuance of a mortgage insurance certificate pursuant to § 237.1 et seq. shall also constitute the execution of the contract for assistance payments with respect to the mortgage being insured, if the mortgagor has applied for such assistance payments.

PART 238—YIELD INSURANCE [SEC. 702]

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

Sec.
238.1 Classification of investors.
238.2 Withdrawal of approval.

APPLICATION AND COMMITMENT

238.3 Submission of application.
238.4 Form of application.
238.5 Application and commitment fee.
238.6 Inspection fee.
238.7 Approval of application.

ELIGIBLE PROJECTS

238.8 Project eligibility requirements.

RENTS

238.9 Rental schedule.
238.10 Charges in addition to maximum rental.

TITLE

238.11 Title.

EFFECTIVE DATE

238.12 Effective date.

Subpart B—Contract Rights and Obligations

238.251 Definitions.
238.252 Premiums.
238.253 Contract of insurance.
238.254 Excess earnings.
238.255 Supervision of investor.
238.256 Payment of claims.
238.257 Debentures.
238.258 Termination and reinstatement of contract of insurance.
238.259 Amendment of regulations.
238.260 Effective date.

AUTHORITY: The provisions of this Part 238 issued under sec. 712, 62 Stat. 1281, as amended; 12 U.S.C. 1747k.

Subpart A—Eligibility Requirements

APPROVAL OF INVESTORS

§ 238.1 Classification of investors.

Such of the following may become an approved investor as the Commissioner shall find to be qualified by business experience and facilities to afford assurance of the necessary continuity of long-term investment and to have available the necessary capital required for long-term investment in the project and shall approve as eligible for insurance under Title VII of the National Housing Act:

(a) Any natural person;

(b) Any group of not more than ten natural persons;

(c) Any corporation, company, association, trust or other legal entity; or

(d) Any combination of two or more corporations, companies, associations, trusts or other legal entities having all the powers necessary to comply with the requirements of such title.

§ 238.2 Withdrawal of approval.

Approval of an investor may be withdrawn by notice from the Commissioner at any time for cause deemed sufficient by the Commissioner, but no withdrawal will affect any commitment or contract of insurance theretofore entered into with such investor.

APPLICATION AND COMMITMENT

§ 238.3 Submission of application.

Any approved investor may submit an application for insurance in connection with an investment which it proposes to make pursuant to the provisions of Title VII of the National Housing Act.

§ 238.4 Form of application.

The application must be made upon a standard form prescribed by the Commissioner and filed at the local Federal Housing Administration office serving the area in which the property is located.

§ 238.5 Application and commitment fee.

The application must be accompanied by the investor's check to cover an application fee computed at the rate of $150 per $1,000 of the estimated investment stated in the application, to cover the cost of analysis by the Commissioner, and at the time of delivery of the commitment a further sum (referred to as commitment fee) shall be paid, which, when added to the application fee, will aggregate $3.00 per $1,000 of the estimated investment as specified in the commitment. If the application is refused as a result of preliminary examination by the Commissioner, the fee paid will be returned to the applicant but no portion of the fee will be returned after further work has been performed following preliminary examination. If the amount of established investment is increased after insurance, the fees herein provided for shall be based upon the amount of such increase.

§ 238.6 Inspection fee.

An inspection fee computed at the rate of $2.00 per $1,000 of the face amount of the commitment shall be paid as provided for in the commitment.

§ 238.7 Approval of application.

Upon approval of an application a commitment will be issued upon a form approved by the Commission setting forth the terms and conditions upon which the insurance will be granted.

ELIGIBLE PROJECTS

§ 238.8 Project eligibility requirements.

To be eligible for insurance, a project shall meet the following conditions:

(a) The Commissioner shall be satisfied that there is in the locality or metropolitan area of such project a need for

new rental dwellings at rents comparable to the rents proposed to be charged for the dwellings in such project.

(b) The project shall be economically sound and shall contain at least twenty-five (25) dwelling units.

(c) The dwellings in such project shall be acceptable to the Commissioner as to quality, design, size and type.

(d) The investor shall establish in a manner satisfactory to the Commissioner that good and merchantable title in fee simple or under long-term leasehold (under a lease having a term of not less than 99 years which is renewable or under a lease having not less than 60 years to run from the date of commitment to insure under Title VII of the act is executed) satisfactory to the Commissioner to the real estate to be included in the project is vested in the investor free and clear of liens and will so remain as long as the contract of insurance remains in force, and after completion of the project, the investor must establish that there are no outstanding unpaid obligations contracted in connection with the construction or completion of the project, except taxes and such other liens and obligations as may be approved or prescribed by the Commissioner. Debentures issued by the investor which are payable out of net income from the project and from the benefits of the insurance contract shall not be construed as "unpaid obligations" as such term is used in this paragraph.

(e) The project may include, in addition to the dwellings, such stores, commercial or community facilities as the Commissioner shall determine to be necessary or desirable appurtenances to the project.

(f) The investor shall establish in a manner satisfactory to the Commissioner that it has and will make available sufficient funds to complete the project in accordance with the plans and specifications approved by the Commissioner.

(g) An investor must establish that no restriction upon the sale or occupancy of the project, on the basis of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950, and must certify that so long as the insurance contract remains in force he will not file for record any restriction affecting the project or execute any agreement, lease, or conveyance affecting the project which imposes any such restriction upon its sale or occupancy.

(h) (1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor, issued May 9, 1951 (29 CFR 5.1 to 5.12).

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

(3) No project shall be eligible for insurance unless subsequent to completion of construction there is filed a certificate, executed by the general contractor, in the form required by the Commissioner, certifying that the laborers and mechanics employed in the construction of the dwelling or dwellings or housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor prior to the beginning of construction and after the date of filing of the application for insurance.

RENTS

§ 238.9 Rental schedule.

No charge shall be made by the investor for the dwelling accommodations offered by the project in excess of that provided in a rental schedule to be filed with the Commissioner and approved by him or his duly constituted representative prior to the opening of the project for rental: *Provided,* That in no event shall the rent proposed to be charged or collected for any dwelling in the project, including charges for heat and other customary services as determined by the Commissioner, exceed $120 per month, nor shall the average rental for all dwellings in the project exceed $100 per month.

§ 238.10 Charges in addition to maximum rental.

The established maximum rental shall be the maximum authorized charge against any tenant for the dwelling accommodations offered exclusive of telephone, gas, electric, and refrigeration services. Charges in addition to such maximum rental may be made against a tenant for telephone, gas, electric, refrigeration, and other facilities and privileges furnished by the investor, but only with the approval of the Commissioner. No additional amounts may be required from a tenant in the nature of security deposits as a condition to occupancy of such units without the prior approval of the Commissioner.

TITLE

§ 238.11 Title.

At the time the contract of insurance is executed, the investor shall furnish to the Commissioner a survey satisfactory to him and a policy of title insurance as provided in paragraph (a) of this section: *Provided, however,* That in the event the investor is unable to furnish such policy for reasons satisfactory to the Commissioner the investor, without expense to the Commissioner, shall furnish evidence of title as prescribed in paragraphs (b), (c) or (d) of this section as the Commissioner may require.

(a) An owner's policy of title insurance issued by a company satisfactory to the Commissioner in such form and amount as may be approved by the Commissioner. Such policy shall run to the investor and the Commissioner as their respective interests may appear and may contain such exceptions, restrictions and limitations as are approved by the Commissioner.

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

(c) A Torrens or similar title certificate.

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

EFFECTIVE DATE

§ 238.12 Effective date.

The administrative rules in this subpart are effective as to all projects on which a commitment to insure under Title VII is issued on or after November 12, 1948.

Subpart B—Contract Rights and Obligations

§ 238.251 Definitions.

As used in this subpart, the following terms shall have the meanings respectively ascribed to them below, and unless the context clearly indicates otherwise, shall include the plural as well as the singular number.

(a) The term "Commissioner" shall mean the Federal Housing Commissioner.

(b) The term "act" shall mean the National Housing Act, as amended.

(c) The term "contract of insurance" shall mean the written instrument duly executed by the Commissioner and the investor, setting forth the terms, conditions and provisions of insurance.

(d) The term "investor" shall mean the insured named in the contract of insurance and shall include any assignee, pledgee or transferee of the insured which has been approved by the Commissioner and which is entitled to receive the benefits of the insurance contract.

(e) The term "project" shall mean a project (including all property, real and personal, contracts, rights and choses in action acquired, owned or held by the investor in connection therewith) of an investor designed and used primarily for the purpose of providing dwellings, the occupancy of which is permitted by the investor in consideration of agreed charges, and may include such stores, offices, commercial, community or other facilities as the Commissioner may approve.

(f) The term "estimated investment" shall mean the estimated cost of the development of the project as stated in the application submitted to the Commissioner for insurance under Title VII of

the act and the regulations in this subpart.

(g) The term "establishment investment" shall mean the amount of the reasonable costs as approved by the Commissioner, incurred by the investor in, and necessary for carrying out all works and undertakings for the development of the project, and shall include the premium charge for the first operating year and the cost of all necessary surveys, plans and specifications, architectural, engineering, or other special services (land acquisition, site preparation, construction and equipment; a reasonable return on the funds of the investor paid out in the course of the development of the project up to, and including, the initial occupancy date; necessary expenses in connection with the initial occupancy of the project; and the cost of such items as the Commissioner shall determine to be necessary for the development of the project:

(1) Less the amount by which the rents and revenues derive from the project up to, and including, the initial occupancy date, exceeded the reasonable and proper expenses as approved by the Commissioner, incurred by the investor in, and necessary for, operating and maintaining said project up to, and including, the initial occupancy date, or

(2) Plus the amount by which such expenses exceeded such rents and revenues as the case may be: *Provided*, That the amount of the established investment so determined and approved by the Commissioner as of the date of initial occupancy of the project shall be subject to adjustment from time to time pursuant to the authority contained in section 712 of the act, and in accordance with the regulations in this subpart, to provide for increases, in such amounts as the Commissioner determines, if the investor makes capital improvements or additions to the project, or to provide for decreases, in such amounts as the Commissioner determines, if any part of the project is sold or transferred.

(h) The term "physical completion date" shall mean the last day of the calendar month in which the Commissioner determines that the construction of the project is substantially completed and substantially all of the dwellings therein are available for occupancy.

(i) The term "initial occupancy date" shall mean the last day of the calendar month in which 90 percent in number of the dwellings in the project on the physical completion date shall have been occupied, but shall in no event be later than the last day of the sixth calendar month next following the physical completion date.

(j) The term "operating year" shall mean the period of 12 consecutive calendar months next following the initial occupancy date and each succeeding period of 12 consecutive calendar months, and the period of the first 12 consecutive calendar months next following the initial occupancy date shall be the first operating year.

(k) The term "gross income" for any operating year shall mean the total rents and revenues and other income derived from, or in connection with, the project during such operating year.

(l) The term "operating expenses" for any operating year shall mean the amounts, as approved by the Commissioner, necessary to meet the reasonable and proper costs of, and to provide for, operating and maintaining the project, and to establish and maintain reasonable and proper reserves for repairs, maintenance, and replacements, and other necessary reserves during such operating year, and shall include necessary expenses for real estate taxes, special assessments, premium charges made pursuant to Title VII of the act and the regulations in this part, administrative expenses, the annual rental under any lease pursuant to which the real property comprising the site of the project is held by the investor, and insurance charges, together with such other expenses as the Commissioner shall determine to be necessary for the proper operation and maintenance of the project, but shall not include income taxes.

(m) The term "net income" for any operating year shall mean gross income remaining after the payment of the operating expenses.

(n) The term "minimum annual amortization charge" shall mean an amount equal to 2 percent of the established investment, except that in the case of a project where the real property comprising the site thereof is held by the investor under a lease, if (notwithstanding the proviso of § 238.252) the gross income for any operating year shall be less than the amount required to pay the operating expenses (including the annual rental under such lease), the minimum annual amortization charge for such operating year shall mean an amount equal to 2 percent of the established investment plus the amount of the annual rental under such lease to the extent that the same is not paid from the gross income.

(o) The term "annual return" for any operating year shall mean the net income remaining after the payment of the minimum annual amortization charge.

(p) The term "insured annual return" shall mean an amount not to exceed 2¾ percent per annum on the outstanding investment and shall be fixed in the commitment to insure or in the contract of insurance.

(q) The term "minimum annual return" for any operating year shall mean an amount equal to 3½ percent of the outstanding investment for such operating year or such lesser amount as shall be agreed upon by the investor and the Commissioner.

(r) The term "excess earnings" for any operating year shall mean the net income derived from the project in excess of the minimum annual amortization charge and the minimum annual return and income taxes.

(s) The term "outstanding investment" for any operating year shall mean the established investment less an amount equal to:

(1) The aggregate of the minimum annual amortization charge for each preceeding operating year plus

(2) The aggregate of the excess earnings, if any, during each preceding operating year applied, in addition to the minimum annual amortization charge, to amortization in accordance with the provisions of § 238.254:

Provided, That the outstanding investment for any operating year shall be subject to adjustment in such amounts as the Commissioner determines, pursuant to the authority contained in section 712 of the act and the regulations in this subpart, to provide for a reduction in such outstanding investment for any operating year pending the restoration of damage to the project caused by fire, flood, earthquake, tornado or other casualty.

§ 238.252 Premiums.

(a) The investor shall pay to the Commissioner an annual insurance premium in an amount equal to ½ of 1 percent of the outstanding investment for the operating year for which such premium charge is payable without taking into account the excess earnings, if any, applied, in addition to the minimum amortization charge, to amortization of the outstanding investment. Such premimum charge shall be payable annually in advance by the investor either in cash or debentures issued by the Commissioner under Title VII of the act at par plus accrued interest: *Provided*, That if in any operating year the gross income shall be less than the operating expenses, the premium charge payable during such operating year shall be waived, but only to the extent of the amount of the difference between such expenses and such income and subject to subsequent payment out of any excess earnings as provided in § 238.254.

(b) The first premium covering the first operating year shall be payable on the date the contract of insurance is executed and subsequent annual premiums shall be paid on or before the first day of each succeeding operating year until the project is acquired by the Commissioner or until the contract of insurance is otherwise terminated as set forth in § 238.258. At the close of each operating year the premium payable in advance for such operating year may be adjusted to take into account any increase or decrease in the outstanding investment for such operating year pursuant to the authority contained in section 712 of the act and the regulations in this subpart and any excess premiums collected shall be refunded to the investor and any deficiencies in the amount of the premium already collected and the amount found to be due for such operating year shall be paid by the investor.

§ 238.253 Contract of insurance.

Upon compliance satisfactory to the Commissioner with the terms of the commitment to insure, the Commissioner and the investor shall execute the contract of insurance. The Commissioner

and the investor shall thereafter be bound by the contract of insurance, subject to the provisions of the regulations in this subpart which shall form part of each such contract. Any or all rights, claims or other benefits under the provisions of the insurance contract may be assigned, pledged or otherwise transferred upon such terms and conditions as may be approved by the Commissioner and agreed upon by an instrument in writing executed by the original investor and by an assignee, pledgee, or other transferee satisfactory to the Commissioner.

§ 238.254 Excess earnings.

For all of the purposes of any insurance contract, 50 percent of the excess earnings, if any, for any operating year may be applied, in addition to the minimum annual return, to return on the outstanding investment but only to the extent that such application thereof does not result in an annual return of more than 5 percent of the outstanding investment for such operating year, and the balance of any such excess earnings shall be applied, in addition to the minimum annual amortization charge, to amortization of the outstanding investment: *Provided,* That if in any preceding operating years the gross income shall have been less than the operating expenses, such excess earnings shall be applied to the extent necessary in whole or in part, first, to the reimbursement of the amount of the difference between such expenses (exclusive of any premium charges previously waived under § 238.252) and such income, and second, to the payment of any premium charges previously waived hereunder.

§ 238.255 Supervision of investor.

(a) *Maintenance of books and records.* The investor shall establish and maintain such books, records and accounts with respect to the insured project as may be prescribed by the Commissioner and will, in the judgment of the Commissioner, adequately and accurately reflect the condition and operations of the project. The investor shall agree to permit the Commissioner or his agent at all reasonable times upon request to examine any and all books. records, contracts, documents, and accounts of the investor which reflect in any way the condition or operations of the project.

(b) *Financial and operating statements.* With respect to each project, the contract of insurance shall provide that after the close of each operating year the investor shall submit to the Commissioner for approval a financial and operating statement covering such operating year in such form as the Commissioner may prescribe. If any such financial and operating statement shall not have been submitted or, for proper cause, shall not have been approved by the Commissioner, payment of any claim submitted by the investor may, at the option of the Commissioner, be withheld, in whole or in part, until such statement shall have been submitted and approved.

(c) *Special information and reports.* The investor shall furnish, at the request of the Commissioner or his agent, specific answers to questions upon which information is desired from time to time relating to the income, assets, liabilities, contracts, operation, rents, or condition of the property and any other information with respect to the investor or the project which may reasonably be required.

(d) *Rents to conform with rental schedule.* The investor shall charge and collect rents for the dwelling units in the project only in accordance with a rent schedule approved by the Commissioner. No change therein nor additional requirements in the nature of security deposits as a condition to occupancy of such units shall be made by the investor without the prior approval of the Commissioner.

(e) *Increases and decreases in established investment.* No capital expenditure for additions or improvements which would have the effect of increasing the established investment or no sale of any portion of the project which would have the effect of reducing the established investment shall be made without the prior written approval of the Commissioner. In no event shall the investor mortgage or pledge all or any part of the project as security for any debt so long as the contract of insurance remains in force.

§ 238.256 Payment of claims.

If in any operating year the net income of a project is less than the aggregate of the minimum annual amortization charge and the insured annual return, the Commissioner, upon submission by the investor of a claim for the payment of the amount of the difference between such net income and the aggregate of the minimum annual amortization charge and the insured annual return, and after proof of the validity of such claim, shall pay to the investor in cash from the General Insurance Fund the amount of such difference as determined by the Commissioner, but not exceeding in any event an amount equal to the aggregate of the minimum annual amortization charge and the insured annual return.

§ 238.257 Debentures.

(a) *Commissioner's right to acquire project.* If the aggregate of the amounts paid to the investor pursuant to § 238.256 shall at any time equal or exceed 15 percent of the established investment, the Commissioner thereafter shall have the right, after written notice to the investor of his intention so to do, to acquire, as of the first day of the operating year after such notice is given, such project in consideration of the issuance and delivery to the investor of debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any such case, the investor shall be obligated to transfer and convey to the Commissioner good and merchantable title to the project undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances, and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish to the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him. In the event the investor fails to meet the obligation described in the preceding sentence, the Commissioner may, at his option, terminate the insurance contract.

(b) *Investor's right to convey project to Commissioner.* If in any operating year the aggregate of the differences between the operating expenses (exclusive of any premium charges previously waived under § 238.252) and the gross income for the preceding operating years, less the aggregate of any deficits in such operating expenses reimbursed from excess earnings as provided in § 238.254, shall at any time equal or exceed 5 percent of the established investment, the investor shall thereafter have the right, after written notice to the Commissioner of his intention so to do, to convey the project to the Commissioner as of the first day of the operating year after such notice is given, and to receive from the Commissioner debentures having a total face value equal to 90 percent of the outstanding investment for such operating year. In any case, the investor shall be obligated to transfer and convey to the Commissioner good and merchantable title to the project, undamaged by fire, earthquake, flood, tornado, or waste, and free and clear of all liens, encumbrances and defects, except such as were approved by the Commissioner at the time the project was insured or may be approved by him at the time of such transfer, and shall furnish the Commissioner satisfactory continuation of the title evidence approved at the time of insurance to, and including, the transfer to the Commissioner without cost to him.

(c) *Waste.* The term "waste" as used in paragraphs (a) and (b) of this section means permanent or substantial injury caused by unreasonable use or abuse, and is not intended to include damage caused by ordinary wear and tear.

(d) *Effect of Commissioner's acquisition of project.* Upon the acquisition of a project by the Commissioner pursuant to this section, the insurance contract shall terminate.

(e) *Date and term of debentures.* The debentures issued under Title VII of the act to any investor shall be issued in accordance with the provisions of section 708 of the act, shall be dated as of the first day of the operating year in which the project for which such debentures were issued was acquired by the Commissioner, shall bear interest at the rate of 2¾ percent per annum, payable semiannually on the first day of January and the first day of July of each year, and shall mature on the first day of July in the twentieth year following the date of issuance thereof. Such debentures shall be registered as to principal and interest and all or any such debentures may be redeemed at the option of the Commissioner with the approval of the Secretary of the Treasury at par and accrued

interest on any interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall prescribe. Such debentures shall be issued in multiples of $50 and any difference not in excess of $50 between the amount of debentures to which the investor is otherwise entitled hereunder and the aggregate face value of the debentures issued shall be paid in cash by the Commissioner to the investor.

§ 238.258 Termination and reinstatement of contract of insurance.

(a) *Termination of insurance contract at investor's option.* The investor, after written notice to the Commissioner of his intention to do so, may terminate, as of the close of any operating year in which such notice is given, any contract of insurance, upon payment to the Commissioner of an adjusted premium charge of 1 percent of the established investment but not in excess of the aggregate amount of the premium charges which the investor otherwise would have been required to pay if such contract of insurance had not been so terminated.

(b) *Termination of insurance contract at Commissioner's option.* The Commissioner may, at his option, terminate any insurance contract in the event that:

(1) The investor fails or refuses for a period of 30 days after receipt of a demand by the Commissioner to pay insurance premiums in accordance with the provisions of § 238.252.

(2) The investor sells or transfers all or any part of the project without the approval of the Commissioner.

(3) The investor fails or refuses to comply with the requirements and submit to the supervision of the Commissioner in the manner and to the extent prescribed in § 238.255.

(c) *Reinstatement of insurance contract.* Upon application by the investor and compliance with such terms and conditions as may be required by the Commissioner in connection with the particular transaction any contract of insurance terminated pursuant to paragraph (b) of this section may be reinstated, subject to the investor making payment to the Commissioner of an amount equal to the insurance premiums which would have been due and payable if the contract of insurance had not been terminated.

(d) *Expiration of insurance contract.* Any insurance contract shall expire as of the first day of the operating year for which the outstanding investment amounts to not more than 10 percent of the established investment.

§ 238.259 Amendment of regulations.

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

§ 238.260 Effective date.

The regulations in this subpart shall be effective as to all contracts of insurance or commitments to insure issued subsequent to the date hereof.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

Subpart A—Eligibility Requirements

Sec.
240.1 Incorporation by reference.
240.5 Maximum loan amounts.
240.10 Use of proceeds.
240.15 Nature of property.

Subpart B—Contract Rights and Obligations

240.251 Incorporation by reference.

AUTHORITY: The provisions of this Part 240 issued under sec. 211, 52 Stat. 23, as amended, sec. 240, 82 Stat. 476, as amended; 12 U.S.C. 1715b.

Subpart A—Eligibility Requirements

§ 240.1 Incorporation by reference.

(a) All of the provisions in §§ 203.50 et seq. of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to loans for the purchase of the fee simple title to property which are insured under section 240 of the Act except the following provisions:

Sec.
203.73 Maximum loan amounts.
203.82 Use of proceeds.
203.83 Nature of borrower's ownership.
203.95 Owner-occupancy in military service cases.

(b) For the purposes of this subpart, all references in §§ 203.50 et seq. of this chapter to:

(1) Section 203(k) of the Act shall be construed to refer to section 240 of the Act.

(2) Sections 203.50 et seq. of this chapter shall be construed to refer to this subpart.

§ 240.5 Maximum loan amounts.

The loan shall not exceed:

(a) The cost of purchasing the fee simple title or $10,000 per family unit, whichever is the lesser; or

(b) An amount which when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 203.18(a)(1), 203.18(b), or 203.18(c) of this chapter, as applicable.

§ 240.10 Use of proceeds.

The proceeds of the loan shall be used only by homeowners to finance the purchase of the fee simple title to property on which their homes are located.

§ 240.15 Nature of property.

To be eligible for insurance, the loan must relate to property on which there is located a dwelling designed principally for a one-, two-, three- or four-family residence, and which prior to the purchase of the fee simple title is being leased by the borrower under a long-term ground lease.

Subpart B—Contract Rights and Obligations

§ 240.251 Incorporation by reference.

(a) All of the provisions of §§ 203.440 et seq. of this chapter covering insured home improvement loans under section 203(k) of the Act shall apply to loans for the purchase of the fee simple title to property which are insured under section 240 of the Act.

(b) In addition to the provisions of paragraph (a) of this section, the definitions contained in § 203.50 of this chapter shall apply to this subpart.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

Subpart A—Eligibility Requirements

Sec.
241.1 Definitions.
241.10 Application and commitment fees.
241.15 Commitments.
241.20 Inspection fee.
241.25 Fees on increases.
241.30 Refund of fees.
241.35 Charges by lender.
241.40 Eligible lenders.
241.45 Note and security form.
241.55 Method of loan payment.
241.60 Date of first payment to principal.
241.65 Maturity.
241.70 Maximum loan amount.
241.75 Maximum interest rate.
241.80 Eligibility of title.
241.85 Title evidence.
241.90 Accumulation of next premium.
241.95 Application of payments.
241.100 Prepayment privilege and charge.
241.105 Late charge.
241.110 Certificate of use for transient or hotel purposes.
241.115 Zoning, deed or building restrictions.
241.120 Certificate of nondiscrimination by borrower.
241.125 Use of loan proceeds.
241.130 Supervision by Commissioner.
241.135 Building loan agreement.
241.140 Assurance of completion.
241.145 Labor requirements.
241.150 Discrimination prohibited.
241.155 Cost certification requirements; loans $200,000 or less.
241.160 Cost certification requirements; loans over $200,000.
241.249 Effect of amendments.

Subpart B—Contract Rights and Obligations

241.251 Incorporation by reference.
241.260 Definitions.
241.265 Termination of insurance.
241.270 Refund upon termination of insurance.
241.275 No vested right in fund.

AUTHORITY: The provisions of this Part 241 issued under sec. 211, 52 Stat. 23, as amended, sec. 241, 82 Stat. 503, as amended; 12 U.S.C. 1715b, 1715z-6.

Subpart A—Eligibility Requirements

§ 241.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representative.

(b) "Act" means the National Housing Act, as amended.

(c) "FHA" means the Federal Housing Administration.

(d) "Insured loan" means a loan which has been insured by the FHA, as evidenced by the endorsement of the credit instrument for insurance by the Commissioner.

(e) "Insurance premium" means the loan insurance premium paid by the financial institution to the Commissioner in consideration of the contract of insurance.

(f) "Loan" means an advance of funds or credit evidenced by a note, which is secured by a security instrument.

(g) "Outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

(h) "Lender" means an approved financial institution eligible for insurance under section 241 of the Act that is the holder of an insured loan or the holder of a loan presented for insurance.

(i) "Borrower" means the owner of a project covered by an insured mortgage or a mortgage held by the Secretary, which owner receives and becomes primarily obligated for the payment of a supplementary loan.

(j) "Secretary" means the Secretary of Housing and Urban Development or his authorized representatives.

§ 241.10 Application and commitment fees.

(a) *Application.* An application for the issuance of either a conditional or firm commitment for insurance of an improvement loan on a project shall be submitted by an approved lender and by the sponsors of such project through the local FHA office on an approved FHA form. No application shall be considered unless the exhibits called for by such form are furnished.

(b) *Application and commitment fees*—(1) *Application for conditional commitment.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application for a conditional commitment.

(2) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $1.50 per thousand dollars of the amount of the loan applied for, if such fee has not been previously submitted. A commitment fee, in an amount which, when added to the application fee, will aggregate $3 per thousand dollars of the loan applied for, shall also be submitted with the application for a firm commitment.

§ 241.15 Commitments.

(a) *Conditional commitment.* The issuance of a conditional commitment indicates completion of the Commissioner's preliminary analysis of the project and constitutes an agreement by the Commissioner, subject to specified terms and conditions, to accept an application for a firm commitment.

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

(c) *Types of firm commitment.* The firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(d) *Term of commitment.* (1) A conditional commitment shall be effective for whatever term is specified in the text of the commitment.

(2) A firm commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

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

(4) The term of either a conditional or firm commitment may be extended in such manner as the Commissioner may prescribe.

(e) *Reopening of expired commitments.* An expired conditional or firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

§ 241.20 Inspection fee.

The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

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

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

§ 241.25 Fees on increases.

(a) *Increase in firm commitment prior to endorsement.* An application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(b) *Increase in loan between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the loan, either by amendment or by substitution of a new loan, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $3 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed $5 per thousand dollars of the amount of the increase requested.

§ 241.30 Refund of fees.

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

§ 241.35 Charges by lender.

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

(b) The lender may also collect from the borrower an initial service charge, as reimbursement for the cost of closing the transaction, in an amount not to exceed the following:

(1) Two percent of the original principal amount of the loan in all cases except where the loan proceeds are to be used only for the purchase of equipment for a nursing home or group practice facility.

(2) One-half of 1 percent of the original principal amount of the loan where the loan proceeds are to be used only for the purchase of equipment for a nursing home or group practice facility.

(c) Any charges to be collected by the lender in addition to those prescribed in paragraphs (a) and (b) of this section, shall be subject to the prior approval of the Commissioner.

§ 241.40 Eligible lenders.

Lenders meeting the applicable eligibility qualifications and requirements contained in §§ 203.1–203.4 or 203.6 of this chapter shall be eligible for insurance of project improvement loans under this subpart.

§ 241.45 Note and security form.

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

§ 241.55 Method of loan payment.

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

§ 241.60 Date of first payment to principal.

The Commissioner shall estimate the time necessary to complete the improvements to the project and shall establish the date of the first payment to principal.

§ 241.65 Maturity.

The loan shall have a maturity satisfactory to the Commissioner but not to exceed the remaining term of the insured mortgage.

§ 241.70 Maximum loan amount.

(a) Where the project is covered by an insured mortgage, the principal amount of the loan shall not exceed the lesser of the following:

(1) Ninety percent of the Commissioner's estimate of the value of the improvements, additions, or equipment.

(2) An amount which, when added to any outstanding indebtedness relating to the property, does not exceed the maximum mortgage amount insurable under the section or title pursuant to which the mortgage covering such project or facility is insured.

(b) Where the project is covered by a mortgage held by the Secretary, the principal amount of the loan shall be in an amount acceptable to the Secretary.

§ 241.75 Maximum interest rate.

The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the loan may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application. Interest shall be payable in monthly installments on the principal then outstanding.

§ 241.80 Eligibility of title.

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

§ 241.85 Title evidence.

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

(1) A policy of title insurance issued by a company satisfactory to the Commissioner. Such policy shall comply with the "L.I.C. Standard Mortgage Form", or the "ATA Standard Mortgage Form", or such other form as may be approved by the Commissioner; shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured; and shall become an owner's policy, running to the lender as owner upon its acquisition of the property in extinguishment of the debt, and to the Secretary as owner upon his acquisition of the property pursuant to the loan insurance contract.

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

(3) A Torrens or similar title certificate.

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

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

§ 241.90 Accumulation of next premium.

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

§ 241.95 Application of payments.

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

(1) Premium charges under the contract of insurance.

(2) Interest on the loan.

(3) Amortization of the principal of the loan.

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

§ 241.100 Prepayment privilege and charge.

(a) *Prepayment privilege.* (1) The security instrument shall contain the following provisions:

(i) A provision permitting prepayment of the loan in whole or in part upon any interest payment date after giving to the lender 30 days advance written notice.

(ii) A provision requiring full prepayment of the loan in the event the insured mortgage or the mortgage held by the Secretary is paid in full prior to maturity, unless the borrower submits to such regulation or restriction as the Commissioner may require.

(2) If the loan exceeds $200,000, it may contain a provision for such charge in the event of prepayment of principal as may be agreed upon between the borrower and lender. The borrower shall be permitted to prepay up to 15 percent of the original principal amount of the loan in any one calendar year without any additional charge. A provision for a charge in the event of prepayment may not be included in a loan of $200,000 or less.

(b) *Prepayment under cost certification.* Any reduction in the original principal amount of the loan resulting from the cost certification requirements of § 241.155 or § 241.160 shall not be construed as a prepayment of the mortgage permitting the imposition of any penalty or charge.

§ 241.105 Late charge.

The note and security instrument may provide for the lender's collection of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the borrower and shall not be deducted from any aggregate monthly payment.

§ 241.110 Certificate of use for transient or hotel purposes.

(a) The borrower shall certify under oath, that so long as the loan is insured or held by the Commissioner, the borrower will not rent, permit the rental, or permit the offering for rental of the housing, or any part thereof, covered by such loan for transient or hotel purposes. For the purpose of this certificate, the term rental for transient or hotel purposes shall mean:

(1) Rental for any period less than 30 days; or

(2) Any rental which includes the provision of customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens and bellboy service.

(b) The provisions of paragraph (a) of this section shall not apply in the following instances:

(1) In connection with a housing for the elderly project covered by a mortgage insured under the provisions of §§ 231.1 et seq. of this chapter or by a mortgage held by the Secretary.

(2) In connection with a nursing home covered by a mortgage insured under the provisions of §§ 232.1 et seq. of this chapter or by a mortgage held by the Secretary.

(3) In connection with a group practice facility covered by a mortgage insured under the provisions of §§ 1100.1 et seq. of this chapter or by a mortgage held by the Secretary.

§ 241.115 Zoning, deed or building restrictions.

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

§ 241.120 Certificate of nondiscrimination by borrower.

The borrower shall certify to the Commissioner as to each of the following points:

(a) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the property covered by the security instrument to any person because of race, color, religion, or national origin.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

§ 241.125 Use of loan proceeds.

The proceeds of the loan shall be used only to finance improvements or additions to a multifamily project or group practice facility which is subject to a mortgage insured under any section or title of the Act or covered by a mortgage held by the Secretary. The proceeds of a loan involving a nursing home or a group practice facility may also be used to purchase equipment to be used in the operation of such nursing home or facility.

§ 241.130 Supervision by Commissioner.

The Commissioner may regulate and restrict the borrower as long as the Commissioner is the insurer, holder or reinsurer of the loan. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 241.135 Building loan agreement.

When advances of loan proceeds during the construction of the improvements are to be insured, the borrower and lender shall, prior to the initial endorsement of the note for insurance, execute a building loan agreement approved by the Commissioner and setting forth the terms and conditions on which progress payments may be advanced during construction.

§ 241.140 Assurance of completion.

(a) The borrower shall furnish assurance of completion of the improvements to the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. No assurance of completion shall be required in cases not involving insurance of advances, if the Commissioner determines that the work involved in the proposed improvements, additions, or equipment installation does not endanger the existing structure and will not significantly interfere with its use during such work. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the lender or with a depository satisfactory to the lender and the Commissioner and shall involve cash or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

(1) Where the estimated cost of the improvements is $500,000 or less and assurance is required, it may be in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners or individuals operating as the general contractor.

(2) Where the estimated cost of the improvements is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance (if required), may be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

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

§ 241.145 Labor requirements.

All of the labor standards and prevailing wage requirements which were applicable to the insurance of the existing project mortgage, or pursuant to which the original project mortgage was insured, shall also be complied with in connection with the loan insured under this section.

§ 241.150 Discrimination prohibited.

Any contract or subcontract for the construction of improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, creed or national origin.

§ 241.155 Cost certification requirements; loans $200,000 or less.

When the principal amount of the loan is $200,000 or less, the following provisions shall apply:

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

(1) The borrower agrees to execute, upon completion of the improvements, a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the applicable percentage of the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $10,000, or adjusted to the lowest $100 multiple where the amount exceeds $10,000.

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

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) *Cost computation.* The term "actual cost of the improvements" shall mean the borrower's cost of the improvements, after deducting the amount of any kickbacks, rebates, or trade discounts received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor and materials, and for any other items of expense approved by the Commissioner: and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

§ 241.160 Cost certification requirements; loans over $200,000.

When the principal amount of the loan is over $200,000, the following provisions shall apply:

(a) *Certification of cost requirements.* Prior to initial endorsement of the loan for insurance, the borrower, the lender and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of precluding any excess of loan proceeds over the actual cost of the improvements to the project. Under this agreement, the borrower shall agree to:

(1) Disclose its relationship with the builder, including any collateral agreement, and with subcontractors, material suppliers, and equipment lessors;

(2) Enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the borrower and the builder;

(3) Execute a certificate of actual costs upon completion of the improvements; and

(4) Apply any excess of loan proceeds over the borrower's actual cost of the improvements in reduction of the outstanding balance of the principal of the loan.

(b) *Form of contract.* The form of contract between the borrower and the builder shall be in accordance with the following:

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

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

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

(c) *Certificates as to subcontracts.* If the Commissioner determines that there is any identity of interest (financial or otherwise) between the borrower, its officers, directors or stockholders and any subcontractor, material supplier, or equipment lessor, the borrower shall certify in form prescribed by the Commissioner, prior to final endorsement of the loan for insurance, that the amounts paid to such subcontractor, material supplier, or equipment lessor, were not more than the rate prevailing in the locality for similar work, materials, and equipment.

(d) *Certificate of actual cost.* The borrower's certificate of actual cost, in form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and prior to final endorsement and shall show the actual cost to the borrower of:

(1) The construction contract, including all costs of construction under a lump sum contract, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the borrower corporation, or to any of its officers, directors or stockholders.

(2) Architect's fees;

(3) Off-site public utilities and streets not included in the general contract;

(4) Organizational and legal work; and

(5) Other items of expense approved by the Commissioner.

(e) *Cost plus fixed fee contract—additional certification.* When the work has been completed under a cost plus fixed fee contract, the borrower's certification shall also show:

(1) Allocations of general overhead items as are acceptable to the Commissioner; and

(2) A reasonable allowance for the builder's profit as established by the Commissioner.

(f) *Contractor's certification—cost plus fixed fee contract.* A contractor receiving a cost plus fixed fee contract shall certify in form prescribed by the Commissioner as to all actual costs paid for labor, materials, and subcontract work under the general contract. Such certification shall take into consideration any kickbacks, rebates, trade discounts, or other similar payments to the builder or borrower corporation or any of its officers, directors or stockholders.

(g) *Adjustment resulting from cost certification.* If the principal obligation of the loan exceeds the applicable percentage of the borrower's actual cost of the improvement, the loan shall be reduced by the amount of such excess prior to the final endorsement for insurance.

(h) *Certificate of public accountant.* Each certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant which shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted auditing standards to the extent deemed necessary to verify the actual costs.

§ 241.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

§ 241.251 Incorporation by reference.

(a) All of the provisions of Subpart B, Part 207 of this chapter, covering mortgages insured under section 207 of the National Housing Act, apply with full force and effect to multifamily project and group practice facility mortgages insured under section 241 of the National Housing Act, except the following provisions:

Sec.
207.251 Definitions.
207.253 Adjusted premium and termination charges.
207.253a Termination of insurance contract.
207.260 Protection of mortgage security.
207.262 No vested right in fund.

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

§ 241.260 Definitions.

All of the definitions contained in § 241.1 shall apply to this subpart. In addition, the term "contract of insurance", as used in this subpart, means the agreement evidenced by endorsement of the credit instrument by the Commissioner or his duly authorized representative, and includes the provisions of this subpart and of the National Housing Act.

§ 241.265 Termination of insurance.

(a) *Prepayment in full.* The contract of insurance shall be terminated if a supplementary loan is paid in full prior to its maturity. Notice of the prepayment shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of the prepayment. The insurance termination shall become effective as of the date of the prepayment. No adjusted premium charge shall be due the Commissioner in connection with such prepayment.

(b) *Voluntary termination.* The contract of insurance shall be terminated upon receipt by the Commissioner of a written request, on a form prescribed by the Commissioner, by the lender and the borrower for such termination. With such request, the lender shall (1) submit the original credit instrument for cancellation of the insurance endorsement, and (2) remit all sums to which the Commissioner is entitled. The termination

shall become effective as of the date these requirements are met. No termination charge shall be due the Commissioner in connection with such termination.

§ 241.270 Refund upon termination of insurance.

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

§ 241.275 No vested right in fund.

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

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—Eligibility Requirements

Sec.
242.1 Definitions.
242.3 Applications.
242.5 Certification by State agency.
242.7 Commitments.
242.9 Inspection fee.
242.11 Fees on increases.
242.13 Reopening of expired commitments.
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242.19 Maximum fees and charges by mortgagee.
242.21 Eligible hospitals.
242.23 Eligible mortgagors.
242.25 Eligible mortgagees.
242.27 Maximum mortgage amounts.
242.29 Adjusted and reduced mortgage amounts.
242.31 Mortgage form and disbursement of mortgage proceeds.
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242.35 Maturity.
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242.43 Covenant for fire insurance.
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242.49 Mortgage lien.
242.51 Prepayment privilege and prepayment charges.
242.52 Late charge.
242.53 Insured advances—building loan agreement.
242.55 Funds and finances—deposits and letters of credit.
242.57 Funds and finances—insured advances—general requirements.
242.59 Funds and finances—offsite utilities and streets.
242.61 Funds and finances—insured advances—assurance of completion.
242.63 Prevailing wage determination.
242.65 Wage certificates and payroll records.
242.67 Labor standards.
242.69 Construction contracts.
242.71 Ineligible contractors.
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242.75 Supervision of mortgagor—form of regulation.
242.77 Supervision of mortgagor—maintenance of project.
242.79 Supervision of mortgagor—books and accounts.
242.81 Supervision of mortgagor—inspection of facilities by Commissioner.
242.83 Supervision of mortgagor—nondiscrimination.
242.85 Zoning, deed or building restrictions.
242.87 Property requirements.
242.89 Title requirements.
242.91 Title evidence.
242.93 Miscellaneous mortgages—existing hospitals.
242.94 Eligibility of mortgages covering hospitals in certain neighborhoods.
242.95 Loans to cover 2-year operating losses.
242.249 Amendment of regulations.

Subpart B—Contract Rights and Obligations

242.251 Incorporation by reference.
242.260 Insurance benefits.

AUTHORITY: The provisions of this Part 242 issued under sec. 211, 52 Stat. 23, sec. 242, 82 Stat. 599; 12 U.S.C. 1715b, 1715z-7.

Subpart A—Eligibility Requirements

§ 242.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner or his authorized representatives.

(b) "Hospital" means a facility—

(1) Which provides community service for inpatient medical care of the sick or injured (including obstetrical care);

(2) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(3) Which is a proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

(c) "Mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with any credit instrument secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments; and by the same instrument or by a separate instrument, it may create a security interest in initial equipment whether or not the equipment is attached to the realty.

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

(e) "Mortgagor" means the original borrower under a mortgage and its successors and assigns.

(f) "Project" means a hospital which has been approved by the Commissioner under the provisions of this subpart.

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

§ 242.3 Applications.

(a) *Prior approval.* An application for insurance of a mortgage under this part shall be considered only in connection with a hospital proposal which has been approved by the Secretary of Health, Education, and Welfare, or his designee, as substantially in accord with those provisions of title VI of the Public Health Service Act and regulations issued thereunder relating to determination of need for the facility and general standards of construction and equipment.

(b) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form by an approved mortgagee and by the sponsors of such project through the local FHA office.

(c) *Application fee.* An application fee of $1.50 per thousand dollars of the amount of the loan applied for shall accompany the application.

§ 242.5 Certification by State agency.

Every application for insurance under this part shall be accompanied by a certificate of the State agency designated in accordance with section 604(a)(1) of the Public Health Service Act for the State in which the project is or will be located, which certificate shall indicate that:

(a) There is a need for the hospital.

(b) There are in force in the state or other political subdivision of the State in which the proposed hospital will be located reasonable minimum standards of licensure and methods of operation for hospitals and such standards and methods of operation will be applied and enforced with respect to the hospital.

§ 242.7 Commitments.

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(b) *Types of commitments.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(c) *Term of commitment.* (1) If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(i) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(ii) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, for

such additional period as the Commissioner deems necessary for completion of construction.

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

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

§ 242.9 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. Such inspection fee shall be paid at the time of initial endorsement, if the case involves the insurance of advances, or prior to the date construction is begun, if the case involves insurance upon completion.

§ 242.11 Fees on increases.

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

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

§ 242.13 Reopening of expired commitments.

An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

§ 242.17 Refund of fees.

Commitment, inspection, and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a government body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 242.19 Maximum fees and charges by mortgagee.

The mortgagee may collect from the cation for approval of a transfer of mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge not to exceed 2 percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 242.21 Eligible hospitals.

The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital or the rehabilitation or replacement of an existing structure by an established hospital.

§ 242.23 Eligible mortgagors.

The mortgagor shall be either a private nonprofit corporation or association or a profit mortgagor, shall be approved by the Commissioner, and shall possess the powers necessary and incidental to operating a hospital.

§ 242.25 Eligible mortgagees.

The provisions of §§ 203.1 through 203.4 of this chapter and §§ 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

§ 242.27 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(a) $50 million; or

(b) 90 percent of the Commissioner's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed.

§ 242.29 Adjusted and reduced mortgage amounts.

(a) *Adjusted mortgage amount—rehabilitation projects.* A mortgage financing the rehabilitation of an existing hospital shall be subject to the following limitations, in addition to those set forth in § 242.27:

(1) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the ownership is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to rehabilitation.

(3) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) The actual purchase price of the land and improvements or the Commissioner's estimate (prior to rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

(b) *Reduced mortgage amount—leaseholds.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement

cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

(c) *Reduced mortgage amounts—costs.* The Commissioner may require a reduction in the mortgage amount after completion if 90 percent of the actual cost of development of the project is less than the mortgage amount stated in the commitment.

§ 242.31 Mortgage form and disbursement of mortgage proceeds.

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

(b) *Disbursement of mortgage proceeds.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to (or for the account of) the mortgagor or to his creditors for his account and with his consent.

§ 242.33 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application. Interest shall be payable in monthly installments on the principal then outstanding.

§ 242.35 Maturity.

The mortgage shall have a maturity not to exceed 25 years from the date amortization begins.

§ 242.37 Payment requirements.

The mortgage shall provide for payments on the first day of each month on account of interest and for payments to principal in accordance with an amortization plan or sinking fund provisions agreed upon by the mortgagor, the mortgagee and the Commissioner.

§ 242.39 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the order set forth:

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

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

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 242.41 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending 1 month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent. The mortgage shall also make provision for adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefor by the mortgagor.

§ 242.43 Covenant for fire insurance.

The mortgage shall contain a covenant requiring the mortgagor to keep the property insured against fire and such other hazards as the Commissioner may indicate. Such insurance shall be in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in an amount estimated by the Commissioner to be the value of the project at the time of its completion. The policies evidencing such insurance shall have attached thereto standard mortgagee clauses making losses payable to the mortgagee and the Commissioner, as interests may appear.

§ 242.45 Racial restriction covenant.

The mortgage shall contain a covenant that, until the mortgage has been paid in full or the contract of insurance otherwise terminated, the mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or use of the mortgaged property on the basis of race, color, or creed. This covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 242.47 Issuance of bonds secured by trust indenture.

In the event that bonds or other obligations are to be issued as a part of the insured mortgage transaction, the form of bonds and the form of trust indenture shall be subject to the approval of the Commissioner, and shall be subject to the following conditions:

(a) The Trustee named in such trust indenture shall be a banking institution or trust company (authorized to act in a fiduciary capacity and which is a mortgagee approved by the Commissioner); and

(b) *Letter of credit.* The mortgagee may accept a letter of credit in lieu of the cash deposit required by this section. If a letter of credit is accepted in lieu of the cash deposit required by paragraph (a)(1), the mortgage proceeds may be advanced prior to any demand being made on the letter of credit.

(c) The holders of the bonds or other obligations shall look solely to the Trustee for the benefits of the contract of mortgage insurance and the trust indenture shall expressly authorize the Commissioner to make payment of any claim under the contract of mortgage insurance to the Trustee, without liability or accountability to the bond holders to see to the application of the mortgage insurance contract benefits; and

(d) The bonds or other obligations shall be issued only to holders meeting the following qualifications:

(1) A mortgagee approved by the Commissioner;

(2) A pension or retirement fund or a profit-sharing plan maintained and administered by a corporation or by a governmental agency or by a trustee or trustees, which has lawful authority to acquire the bonds of other obligations; or

(3) A charitable or nonprofit organization.

§ 242.49 Mortgage lien.

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

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

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

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

§ 242.51 Prepayment privilege and prepayment charges.

(a) *Profit mortgagors.* In the case of a profit mortgagor, the following provisions shall be applicable:

(1) *Prepayment privilege.* The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date after giving the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

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

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

(ii) Any reduction in the original principal amount of the mortgage which the Commissioner may require pursuant to § 242.29(c) shall not be construed as a prepayment of the mortgage.

(b) *Nonprofit mortgagors.* In the case of a nonprofit mortgagor, the following provisions shall be applicable:

(1) *Prepayment privilege.* The mortgage indebtedness may be prepaid in full and the Commissioner's controls terminated only upon the condition that the Commissioner's prior written consent is obtained and upon such terms and conditions as the Commissioner may prescribe. With the prior written approval of the Commissioner, partial prepayments may be made for the purpose of reducing succeeding monthly payments of the remaining balance as recast over the remaining portion of the original mortgage term.

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

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

(ii) Any reduction in the original principal amount of the mortgage which the Commissioner may require pursuant to § 242.29(c) shall not be construed as a prepayment of the mortgage.

(iii) No charge shall be made where the prepayment is made from the proceeds of a Federal grant.

§ 242.52 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed 2 cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 242.53 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

§ 242.55 Funds and finances—deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

(b) *Letter of credit.* Where the use of a letter of credit is acceptable to the Commissioner in lieu of a deposit of cash or securities, the letter of credit shall be issued to the mortgagee by a banking institution and shall be unconditional and irrevocable. The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment thereunder is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

§ 242.57 Funds and finances—insured advances—general requirements.

(a) *Establishment of funds.* If the commitment provides for insurance of advances during construction, the mortgagor shall, prior to initial endorsement, make each of the following deposits:

(1) An amount determined by the Commissioner as sufficient (when added to the proceeds of the insured mortgage) to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the project. The deposit shall be in cash and shall be held by the mortgagee under an appropriate agreement, approved by the Commissioner, requiring that prior to the advance of any mortgage money, all the cash be disbursed for work and material on the physical improvements and for any other charges and expenses which are payable.

(2) An amount representing all fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner.

(b) *Letter of credit—(1) Profit mortgagors.* In the case of a profit mortgagor, the mortgagee may accept a letter of credit in lieu of the cash deposit required by paragraph (a)(2) of this section.

(2) *Nonprofit mortgagors.* In the case of a nonprofit mortgagor, the mortgagee may accept a letter of credit in lieu of the cash deposit required by paragraphs (a)(1) and (2) of this section. If a letter of credit is accepted in lieu of the cash deposit required by paragraph (a)(1) of this section, the mortgage proceeds may be advanced prior to any demand being made on the letter of credit.

§ 242.59 Funds and finances—offsite utilities and streets.

The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

§ 242.61 Funds and finances—insured advances—assurance of completion.

The mortgagor shall furnish assurance of completion of the project in a form and amount satisfactory to the Commissioner.

§ 242.63 Prevailing wage determination.

After the filing of the application for insurance and prior to the beginning of construction, the Commissioner shall obtain from the Secretary of Labor a determination as to the wages prevailing for the various classes of laborers and mechanics in the area where the project is to be constructed.

§ 242.65 Wage certificates and payroll records.

No advance under the mortgage shall be eligible for insurance unless there has been filed such wage certificates and payroll records as may be required by the Commissioner to determine that laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor and any overtime wages at a rate not less than one and one-half times the basic rate of pay for all work time in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

§ 242.67 Labor standards.

(a) *Contract requirements.* Any contract, subcontract, or building loan agreement, executed for the performance of construction or rehabilitation of the hospital, shall contain provisions covering the following requirements:

(1) A requirement for compliance with all applicable regulations of the Secretary of Labor relating to the payment of prevailing wages.

(2) A requirement that each laborer or mechanic employed in the construction or rehabilitation receive compensation at a rate not less than one and one-half times his basic rate of pay for all work time in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

(b) *Waiver of compliance with contract requirements—nonprofit mortgagors.* In the case of a nonprofit mortgagor, the Commissioner may waive the requirement for compliance with the contract provisions prescribed in paragraph (a) of this section in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction or rehabilitation of the hospital, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and where the Commissioner determines that full credit has been received by the mortgagor for any amounts saved through such donated services.

§ 242.69 Construction contracts.

(a) *Awarding of contract.* A contract for the construction or rehabilitation of a hospital shall be entered into by a mortgagor with a builder selected by a competitive bidding procedure acceptable to the Commissioner.

(b) *Form of contract.* The construction contract shall be a lump sum form providing for payment of a specified amount.

(c) *Waiver of competitive bidding.* The Commissioner may waive the requirements for compliance with the competitive bidding procedure prescribed in paragraph (a) of this section upon a determination, by the State agency designated in accordance with Section 604(a)(1) of the Public Health Service Act for the State in which the project is or will be located and by the Secretary of Health, Education, and Welfare or his designee, that competitive bidding for the construction of the project is not required.

§ 242.71 Ineligible contractors.

(a) Contracts relating to the construction of the project shall not be made with a general contractor or a subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest), the name of which is on the list of ineligible contractors or subcontractors established by the Commissioner, or by the Comptroller General under the applicable regulations of the Secretary of Labor.

(b) If the Commissioner determines that a contract has been made contrary to the requirements of paragraph (a) of this section and so notifies the mortgagee, the Commissioner may refuse to insure any subsequent advances of mortgage proceeds.

§ 242.73 Discrimination in employment prohibited.

Any contract or subcontract for the construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, religion, sex, or national origin.

§ 242.75 Supervision of mortgagor—form of regulation.

As long as the Commissioner is the insurer or holder of the mortgage, he may regulate the mortgagor by means of a regulatory agreement, corporate charter or such other means as the Commissioner may prescribe.

§ 242.77 Supervision of mortgagor—maintenance of project.

The mortgagor shall maintain the project's grounds and buildings and the equipment financed with mortgage proceeds in good repair and shall promptly complete such repairs and maintenance as the Commissioner considers necessary.

§ 242.79 Supervision of mortgagor—books and accounts.

The mortgagor's books and accounts relating to the operation of the physical facilities of the project shall be established in a manner satisfactory to the Commissioner, and shall be kept in accordance with the requirements of the Commissioner as long as the mortgage is insured or held by the Commissioner. The mortgagor shall file with the Commissioner such financial reports as the Commissioner may require.

§ 242.81 Supervision of mortgagor—inspection of facilities by Commissioner.

The mortgaged property (including buildings and equipment) and the books, record and documents relating to the operation of the physical facilities of the project shall be subject to inspection and examination by the Commissioner or his authorized representative at all reasonable times.

§ 242.83 Supervision of mortgagor—nondiscrimination.

The mortgagor shall deal with employees and applicants for employment and shall make the hospital facilities available for use without discrimination based on race, color, religion, sex, or national origin.

§ 242.85 Zoning, deed or building restrictions.

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

§ 242.87 Property requirements.

A mortgage to be eligible for insurance shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title.

(b) A lease for not less than 99 years which is renewable.

(c) A lease having a term of not less than 50 years to run from the date the mortgage is executed.

§ 242.89 Title requirements.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 242.91 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgage property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

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

(c) A Torrens or similar title certificate.

§ 242.93 Miscellaneous mortgages—existing hospitals.

(a) The Commissioner may, under such terms and conditions as he may prescribe, insure a mortgage given to finance or refinance an existing hospital that does not have permanent financing, if the construction of such hospital was completed between January 1, 1960, and August 1, 1968.

(b) The aggregate principal balance of all mortgages insured under paragraph (a) of this section and outstanding at any time shall not exceed $20 million.

§ 242.94 Eligibility of mortgages covering hospitals in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation or construction of a hospital 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 (other than those relating to labor standards and prevailing wages) 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 an adequate hospital to serve low and moderate income families.

(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.

§ 242.95 Loans to cover 2-year operating losses.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under this subpart on the date of the commitment to insure such loan. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(e) *Fee.* A combined application and commitment fee of $3 per thousand dollars of the amount of the loan set forth in the commitment shall be paid within 30 days of the date of the commitment.

§ 242.249 Amendment of regulations.

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

Subpart B—Contract Rights and Obligations

§ 242.251 Incorporation by reference.

All of the provisions of Subpart B, Part 207 of this chapter covering mortgages insured under section 207 of the National Housing Act apply to mortgages on hospitals insured under section 242 of the National Housing Act, except the following:

Sec.
207.259 Insurance benefits.

§ 242.260 Insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to mortgages on hospitals insured under this subpart, except that in a case where the mortgage involves the financing or refinancing of an existing hospital pursuant to § 242.93 and the commitment for insuring such mortgage is issued on or after April 1, 1969, the insurance claim shall be paid in cash unless the mortgagee files a written request for payment in debentures. If such a request is made, the claim shall be paid in debentures issued in multiples of $50, with any balance less than $50 to be paid in cash.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

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Subpart A—Eligibility Requirements

DEFINITIONS

§ 244.1 Definitions.

As used in this subpart, the term:

(a) "Act", "Commissioner", "mortgagor", and "mortgagee" shall have the same meaning as prescribed in § 207.251 of this chapter.

(b) "Group practice facility" means an establishment designed for operation primarily by a medical or dental group which provides preventive, diagnostic, and treatment services to ambulatory patients under the professional supervision of persons licensed to practice dentistry, medicine, or optometry in the State.

(c) "Group practice unit" means a private nonprofit organization of one of the following types:

(1) An organization which undertakes to provide (directly or through arrangements with a medical or dental group) complete dental, medical, or optometric care, or any combination thereof. It may also provide health insurance to members or subscribers on a group practice prepayment basis.

(2) An organization established for the purpose of providing dental, medical, or optometric care or for performing functions related to such care through arrangements for the use of the group practice facility by a medical or dental group.

(d) "Medical or dental group" means a partnership or other association of persons licensed to practice dentistry, medicine, or optometry in the State who, as their principal professional activity and as a group responsibility, engage in the coordinated practice of their profession in one or more group practice facilities. The group shall share common overhead expenses, shall jointly establish medical and other records, and shall jointly use substantial portions of the equipment and the services of professional, technical, and administrative staffs. It shall be composed of such types of professional personnel and shall make available such health services as may be required to meet the standards prescribed by the Commissioner.

(e) "Mortgage" means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with any credit instrument or instruments secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments; and by the same instrument or by a separate instrument, it may create a security interest in initial equipment whether or not the equipment is attached to the realty.

(f) "Nonprofit organization" means a corporation, association, foundation, trust, or other organization no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual. The provision by a nonprofit organization of personal health services to members or subscribers or their dependents under a plan which may also provide for other services or insurance benefits, shall not make the organization ineligible under this definition.

(g) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Virgin Islands, and American Samoa.

PRELIMINARY EXAMINATION

§ 244.5 Preliminary examination.

Prior to the filing of an application, the sponsor of a proposed group practice facility may request and shall be given an analysis of the project. A fee of $400 shall accompany the request for analysis.

APPLICATION, FEES, AND CHARGES BY MORTGAGEE

§ 244.10 Application filing and required fees.

(a) *Application.* An application for insurance of a mortgage on a group practice facility shall be submitted by an approved mortgagee and by the sponsors of such project through the local FHA office on an approved FHA form.

(b) *Application fee.* An application fee of $1.50 per thousand dollars of the amount of the mortgage applied for shall accompany the application.

(c) *Commitment*—(1) *Conditions of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured.

(2) *Types of commitments.* The commitment may provide for the insurance of advances of mortgage money made during construction or may provide for the insurance of the mortgage after completion of the improvements.

(3) *Term of commitment.* (i) If the commitment fee is paid as required, a commitment shall have a term which is determined as follows:

(*a*) A commitment to insure advances shall be effective for a period of not more than 180 days from the date of issuance.

(*b*) A commitment to insure upon completion shall be effective for a designated term within which the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(ii) The term of a commitment may be extended in such manner as the Commissioner may, from time to time, prescribe.

(iii) If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of a commitment, the commitment shall expire on the 30th day.

(d) *Commitment fee.* A commitment fee which, when added to the application fee, will aggregate $3 per thousand dollars of the face amount of the mortgage set forth in the commitment, shall be paid within 30 days after the date of the commitment.

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

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

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

(f) *Fees on increases*—(1) *Increase in commitment prior to endorsement.* Upon an application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding commitment, an additional application fee of $1.50 per thousand dollars computed upon the amount of the increase requested shall accompany the application. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the issuance of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment for the increased amount will expire and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of increase in commitment. Where insurance of advances are involved, the additional inspection fee shall be paid at the time of initial endorsement. Where insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses during the first two years following completion of the project, a combined application and commitment fee of $3 per thousand dollars of the amount of the loan applied for shall be submitted with the application for the commitment. No inspection fee shall be required.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the

commitment fee may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

(h) *Transfer fee.* Upon application for approval of a case involving the transfer of physical assets or involving the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage.

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

§ 244.11 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge in an amount not to exceed 2 percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner.

§ 244.12 Unavailability of conventional financing.

The application for insurance shall be accompanied by such evidence as the Commissioner may require to establish that the mortagagor or sponsor has been unable to obtain an uninsured mortgage loan for financing the proposed project with terms comparable to those prescribed in §§ 244.30 through 244.50 for a mortgage insured under this subpart.

§ 244.15 Extension of commitment.

When the mortgagee has failed to take action within the period of time required in order to prevent the expiration of a commitment or in order to reopen an expired commitment, the Commissioner may extend such period and may retroactively reinstate or reopen such commitment.

Eligible Mortgagors

§ 244.20 Eligible mortgagors.

In order to be eligible as a mortgagor under this subpart, the applicant shall establish to the satisfaction of the Commissioner that it qualifies as a group practice unit as that term is defined in § 244.1(c).

Eligible Mortgagees

§ 244.25 Qualifications for lenders.

The provisions of §§ 203.1 through 203.4 of this chapter and §§ 203.6 through 203.9 of this chapter shall govern the eligibility, qualifications and requirements of mortgagees under this subpart.

Maximum Mortgage Amounts

§ 244.30 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of $5 million.

§ 244.32 Maximum mortgage amount—loan to value limitation.

In addition to meeting the dollar limitation set forth in § 244.30, the mortgage shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the replacement cost of the property when construction or rehabilitation is completed. The cost of the property may include the land and proposed physical improvements, equipment, utilities within the boundaries of the property, architect's fees, taxes, and interest accruing during construction, and other miscellaneous charges approved by the Commissioner as incident to the construction or rehabilitation.

§ 244.35 Adjusted mortgage amount—rehabilitation projects.

In addition to meeting the dollar and loan-to-value limitations set forth in §§ 244.30 and 244.32, a mortgage financing the rehabilitation of existing improvements shall be subject to the following additional limitations:

(a) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the ownership is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed rehabilitation.

(b) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(1) The Commissioner's estimate of the cost of rehabilitation, plus

(2) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to rehabilitation.

(c) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(1) The Commissioner's estimate of the cost of rehabilitation, plus

(2) The actual purchase price of the land and improvements or the Commissioner's estimate (prior to rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

§ 244.37 Reduced mortgage amount—leaseholds.

In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent.

§ 244.38 Loans to cover 2-year operating loss.

(a) *Operating loss determination.* When the Commissioner determines that an operating loss has occurred during the first 2 years following completion of the project, he may, in his discretion, accept for insurance under this part, a loan to cover such loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, but in no case shall such rate exceed the rate in effect under § 244.45 on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

(d) *Maturity.* The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

§ 244.40 Mortgage provisions.

All of the provisions of § 207.3 of this chapter apply to mortgages insured under this subpart. These provisions prescribe the mortgage form and the obligation of the mortgagee for disbursing the mortgage proceeds.

Eligible Mortgages

§ 244.45 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 7 percent, except that where a letter inviting submission of an application for commitment was issued by the Secretary before February 18, 1971, or an application for commitment was received by the Secretary before February 18, 1971, the mortgage may bear interest at the maximum rate in effect at the time of issuance of the letter or receipt of the application.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 244.47 Maximum mortgage maturity.

The mortgage shall have a maturity not to exceed 25 years from the date of the beginning of amortization of the mortgage, and shall contain amortization or sinking fund provisions satisfactory to the Commissioner.

§ 244.50 Payment requirements.

The mortgage shall provide for payments on the first day of each month on account of interest and for payments to principal in accordance with an amortization plan or sinking fund provisions agreed upon by the mortgagor, the mortgagee and the Commissioner.

§ 244.52 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the order set forth:

(a) Premium charges under the contract of insurance.

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

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 244.55 Accumulation of accruals.

All of the provisions of § 207.12 of this chapter apply to mortgages insured under this subpart. These provisions relate to payments to be made by the mortgagor to be accumulated by the mortgagee for paying the annual mortgage insurance premium, ground rents, taxes, water rates, special assessments, and fire and other hazard insurance premiums.

§ 244.57 Mortgage convenants.

The mortgage shall contain covenants relating to liens, property insurance, and use of property as prescribed in §§ 207.9, 207.10 and 207.16 of this chapter.

§ 244.58 Racial restriction covenant.

Under the mortgage instrument, the mortgagor shall covenant that until the mortgage has been paid in full, or the contract of insurance otherwise terminated, he will not execute or file for record any instrument which imposes a restriction upon the sale or use of the mortgaged property on the basis of race, color, or creed. This covenant shall be binding upon the mortgagor and his assigns and shall provide that upon violation thereof, the mortgagee may, at its option, declare the unpaid balance of the mortgage immediately due and payable.

§ 244.60 Issuance of bonds secured by trust indenture.

All of the provisions of § 207.15 of this chapter apply to mortgages insured under this subpart. These provisions relate to the issuance of bonds secured by a trust indenture.

§ 244.62 Mortgage lien.

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

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

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

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

§ 244.65 Prepayment privilege, prepayment and late charges.

(a) *Prepayment privilege.* The mortgage indebtedness shall not be prepaid in full and the Commissioner's controls shall not be terminated unless the Commissioner gives his prior consent to such prepayment.

(b) *Prepayment charge.* The mortgage may contain a provision for such additional charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee. However, the mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such additional charge. Any reduction in the original principal amount of the mortgage resulting from the certification of cost requirements shall not be construed as a prepayment of the mortgage.

(c) *Late charge.* The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed two cents for each dollar of each payment to interest or principal more than 15 days in arrears, to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 244.67 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and the mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, each progress payment shall be approved by the Commissioner.

WAGE STANDARDS

§ 244.70 Prevailing wage requirements.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall contain provisions requiring compliance with all applicable regulations of the Secretary of Labor relating to the payment of prevailing wages. In addition, a requirement shall be included that each laborer or mechanic employed on the project receive compensation at a rate not less than one and one-half times his basic rate of pay for all work time, in excess of 8 hours during any workday or in excess of 40 hours during any workweek.

§ 244.72 Prevailing wage determination.

After the filing of the application for insurance and prior to the beginning of construction, the Commissioner shall obtain from the Secretary of Labor a determination as to the wages prevailing for the various classes of laborers and mechanics in the area where the project is to be constructed.

§ 244.75 Ineligible contracts.

(a) Contracts relating to the construction of the project shall not be made with a general contractor or a subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest), the name of which is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under the applicable regulations of the Secretary of Labor.

(b) If the Commissioner determines that a contract has been made contrary to the requirements of paragraph (a) of this section and so notifies the mortgagee, the Commissioner may refuse to insure any subsequent advances of mortgage proceeds.

§ 244.77 Wage certificate.

No advance under the mortgage shall be eligible for insurance unless there is filed with the application for such advance a wage certificate as required by the Commissioner. The certificate shall state that the laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor and any overtime wages at a rate not less than one and one-half times the basic rate of pay for all work time, in excess of 8 hours during any workday, or in excess of 40 hours during any workweek.

FUNDS AND FINANCES

§ 244.85 Funds and finances—deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

(b) *Letter of credit.* Where a letter of credit is acceptable to the Commissioner in lieu of deposit of cash or securities, the letter of credit shall be unconditional and irrevocable. The letter of credit shall be issued to the mortgagee by a banking institution. The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment under the letter of credit is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

§ 244.87 Funds and finances—offsite utilities and streets.

The Commissioner shall require assurance of completion of offsite public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

§ 244.90 Funds and finances—insured advances—general requirements.

(a) *Establishment of funds.* If the commitment provides for insurance of advances during construction, the mortgagor shall, prior to initial endorsement, make each of the following deposits:

(1) An amount determined by the Commissioner as sufficient (when added to the proceeds of the insured mortgage) to assure completion of the project and to pay the initial service charge, the carrying charges, and the legal and organization expenses incident to the project. The deposit shall be in cash and shall be held by the mortgagee under an appropriate agreement, approved by the Commissioner, requiring that prior to the advance of any mortgage money, all the cash be disbursed for work and material on the physical improvements, and for any other charges and expenses which are payable.

(2) An amount representing all fees and charges to be paid by the mortgagor in connection with financing which are in excess of the initial service charge and which have been approved by the Commissioner.

(b) *Deposit and use of funds.* Unless other arrangements acceptable to the Commissioner are made, the funds referred to in paragraph (a) of this section shall be subject to the provisions of § 244.85(a).

(c) *Letter of credit.* The mortgagee may accept, in lieu of a cash deposit required by paragraph (a)(2) of this section, a letter of credit as provided in § 244.85(b).

§ 244.92 Funds and finances—insured advances—working capital.

(a) The amount of working capital, if any, required by the Commissioner to be deposited by the mortgagor with the mortgagee or in a depository satisfactory to the mortgagee and under its control, shall not exceed 2 percent of the original amount of the mortgage. Disbursement from such deposit shall be made only in a manner prescribed by the Commissioner.

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

§ 244.95 Funds and finances—insured advances—assurance of completion.

(a) *In general.* The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, or a letter of credit, as required by the Commissioner. The types of assurance to be furnished are as follows:

(1) Where the estimated cost of construction or rehabilitation is $200,000 or less, assurance will be accepted in the form of a personal indemnity agreement executed by the principal officers, directors, stockholders, or partners or individuals operating as the general contractor.

(2) Where the estimated cost of construction or rehabilitation is more than $200,000 or where such cost is less than $200,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, or a letter of credit, the amount of which shall be prescribed by the Commissioner.

(b) *Indemnity agreement and bond requirements.* The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner.

(c) *Escrow deposit requirements.* The escrow deposit shall consist of cash, securities of the United States, or securities which are fully guaranteed by the United States as to principal, except that FHA debentures may not be used for such purpose. The deposit shall meet the requirements of § 244.86(a).

(d) *Letter of credit requirements.* The letter of credit shall meet the requirements of § 244.85(b).

SUPERVISION OF MORTGAGOR

§ 244.100 Supervision of mortgagor—form of regulation.

The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer or reinsurer of the mortgage or while the Secretary is the holder of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter or such other means as the Commissioner approves.

§ 244.102 Supervision of mortgagor—maintenance of project.

The mortgagor shall maintain the project's grounds and buildings and the equipment financed with mortgage proceeds in good repair. It shall promptly complete such repairs and maintenance as the Commissioner considers necessary and required.

§ 244.105 Supervision of mortgagor—books and accounts.

The books and accounts of the mortgagor relating to the operation of the physical facilities of the project (exclusive of the books and records relating to the group practice of medicine, dentistry, or optometry) shall be established and maintained in a manner satisfactory to the Commissioner. They shall be kept in accordance with the requirements of the Commissioner so long as the mortgage is insured by the Commissioner or the mortgage is held by the Secretary. The mortgagor shall file with the Commissioner such financial reports as the Commissioner may require.

§ 244.107 Supervision of mortgagor—inspection of facilities by Commissioner.

The mortgagor's property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers relating to the operation of the physical facilities of the project (exclusive of the books and records relating to the group practice of medicine, dentistry or optometry) shall be subject to inspection and examination by the Commissioner or his duly authorized representative at all reasonable times.

§ 244.110 Supervision of mortgagor—control over surplus cash.

Surplus cash acquired by the mortgagor from the operation of the project may be used only for such specific purposes as may be approved by the Commissioner. The term "surplus cash" as used in this section shall mean the cash legally available and remaining after the payment and allocation of funds as follows:

(a) The payment of each of the following:

(1) Sums currently due under the terms of the mortgage or note insured by the Commissioner or held by the Secretary.

(2) Amounts required to be deposited in the Reserve Fund for Replacements.

(3) Outstanding obligations of the mortgagor arising out of the operation of the project other than those arising out of the mortgage indebtedness, unless funds for payment have been set aside or deferment of payment has been approved by the Commissioner.

(b) The allocation and placement in a separate account of an amount equal to the aggregate of all special funds required to be maintained by the project.

§ 244.112 Supervision of mortgagor—fund for replacements.

The mortgagor shall deposit and maintain with the mortgagee a reserve fund for replacements. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the regulatory agreement, corporate charter, or in such other document as the Commissioner may require.

§ 244.115 Rental of facilities.

Where the mortgagor rents the group practice facilities to a medical or dental group, the terms of the lease and the amount of rental charge shall be subject to the approval of the Commissioner. Provision shall be included in the lease for an annual review of the rental charge and for adjustments to increase or decrease such rental charge with the approval of the Commissioner. The mortgagor shall make an annual report to the Commissioner as to its financial status and adjustments in the annual rental shall be made only with the approval of the Commissioner.

PROPERTY REQUIREMENTS

§ 244.120 Eligibility of property.

A mortgage to be eligible for insurance shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title.

(b) A lease for not less than 99 years which is renewable.

(c) A lease having a term of not less than 75 years to run from the date the mortgage is executed.

(d) A lease executed by a governmental agency or an Indian or an Indian tribe for the maximum term consistent with the legal authority for the execution of such lease, provided that the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

§ 244.122 Special property requirements.

The project shall be designed for use as a group practice facility which the Commissioner finds:

(a) Will be constructed in an economical manner.

(b) Will not be of elaborate or extravagant design or materials.

(c) Will provide adequate and suitable facilities for the group practice of medicine, optometry, or dentistry.

§ 244.125 Zoning, deed or building restrictions.

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

§ 244.127 Discrimination prohibited.

Any contract or subcontract executed for the construction or rehabilitation of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the same provision against discrimination.

COST CERTIFICATION

§ 244.140 Certification of cost requirements.

(a) Prior to initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee and the Commissioner shall enter into an agreement approved by the Commissioner for the purpose of limiting the outstanding principal balance of the mortgage, at the time of final endorsement, to the statutory limitations based on the actual cost of the project. The agreement shall require the mortgagor to do each of the following:

(1) Disclose its relationship including any collateral agreements with the general contractor, the subcontractor, and the suppliers.

(2) Enter into a construction contract with the general contractor in a form meeting the requirements of § 244.145.

(3) Execute a certificate of actual costs upon completion of the construction.

(4) Reduce the outstanding principal balance of the mortgage by applying thereto any excess of mortgage proceeds over statutory limitations based on actual costs.

§ 244.142 Certificate as to subcontracts.

If the Commissioner determines that the mortgagor or any of its officers, directors, stockholders, partners, or beneficiaries have an interest (financial or otherwise) in a subcontractor or material supplier, the mortgagor shall certify (at such times and in such form as may be prescribed by the Commissioner prior to final endorsement of the mortgage for insurance) that the amounts paid to such subcontractor or material supplier were not more than the rate being paid in the locality for similar type labor and materials.

§ 244.145 Form of contract.

A cost-plus form of contract between the mortgagor and the general contractor shall be used unless it is established to the Commissioner's satisfaction that such form is not required to protect his interests and the interests of the mortgagor, in which case a lump sum contract may be used.

§ 244.147 Certificate of actual costs.

Upon completion of the project to the satisfaction of the Commissioner and prior to final endorsement, the mortgagor shall submit a certificate showing the actual costs of the project to the mortgagor. The certificate shall be in a form prescribed by the Commissioner.

§ 244.150 Certificate of actual costs—general contractor's costs.

Upon completion of the project to the satisfaction of the Commissioner and prior to final endorsement, the general contractor shall submit a certificate of actual costs in a form prescribed by the Commissioner.

§ 244.152 Certificate of actual costs—subcontractor's costs.

Where the subcontractor, material supplier, or equivalent lessor have an identity of interest either with the mortgagor or the general contractor, the Commissioner may require the mortgagor to submit a certificate showing the actual cost of the labor, supplies, or equipment furnished to the project by any one or all of such entities. The certificate shall be in a form prescribed by the Commissioner.

§ 244.155 Records.

The mortgagor shall keep and maintain adequate records of all construction costs, or other cost items not representing work under the general contract and shall require the general contractor to keep similar records. Upon request by the Commissioner, such records, together with any collateral agreements, shall be made available for examination.

§ 244.157 Adjustment of cost—new construction.

In the case of new construction, in order to give effect to land value, the aggregate amount shown in the certificate of actual costs shall be adjusted, prior to final endorsement, as follows:

(a) *Land held in fee.* Where the land included in the mortgage security is owned in fee by the mortgagor, the Commissioner's estimate of the fair market value of such land prior to the beginning of construction shall be added to the total cost shown in the certificate.

(b) *Land held under leasehold.* Where the land included in the mortgage security is held by the mortgagor under a leasehold, the expense of acquiring the leasehold may be added to the aggregate amount shown in the certificate of actual costs. The amount added shall be limited to the Commissioner's estimate, prior to the beginning of construction, of the fair market value of the leasehold or other interest.

§ 244.160 Adjustment of cost—rehabilitation.

In the case of repair or rehabilitation, in order to give effect to land value, the aggregate amount shown in the certificate of actual costs shall be adjusted, prior to final endorsement, as follows:

(a) *Property already owned.* Where no part of the proceeds of the mortgage is to be used to finance the purchase of the land or the existing improvements, the mortgage shall be reduced to an amount which does not exceed 100 percent of the actual costs (as approved by

the Commissioner) of the repair or rehabilitation.

(b) *Property subject to existing mortgage.* Where the proceeds of the mortgage are to be used to refinance an existing mortgage, there shall be added to the actual costs of the repair or rehabilitation the lesser of the following:

(1) The amount of the existing mortgage.

(2) 90 percent of the Commissioner's estimate (prior to repair or rehabilitation) of the fair market value of the land and existing improvements.

(c) *Property to be acquired.* Where the proceeds are to be used to finance the purchase of the land and existing improvements in addition to financing the repair or rehabilitation, there shall be added to the actual costs of the repair or rehabilitation the lesser of the following:

(1) The purchase price of the land and existing improvements.

(2) The Commissioner's estimate (prior to repair or rehabilitation) of the fair market value of the land and existing improvements.

§ 244.162 Reduction in mortgage amount.

If the principal amount of the mortgage exceeds the total shown by the certificate of actual costs, after adjustment as provided in §§ 244.157 and 244.160, the mortgage shall be reduced by the amount of such excess prior to final insurance endorsement.

§ 244.165 Effect of agreement.

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

§ 244.167 Cost certification incontestable.

Upon the Commissioner's approval of the mortgagor's certification of actual costs, such certification shall be final and incontestable, except for fraud or material misrepresentation on the part of the mortgagor.

TITLE

§ 244.180 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the original endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 244.182 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to him, and a policy of title insurance covering such property, as provided in paragraph (a) of this section. If, for reasons the Commissioner deems satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commisioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will become an owner's policy running to the mortgagee or the Secretary, as the case may be.

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

(c) A Torrens or similar title certificate.

FACILITIES FOR OLDER DECLINING AREAS

§ 244.185 Eligibility of mortgages covering facilities in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation or construction of a group practice facility 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 (other than those relating to labor standards and prevailing wages) 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 an adequate group practice facility to serve low and moderate income families.

(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.

§ 244.249 Effect of amendments.

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

Subpart B—Contract Rights and Obligations

§ 244.251 Incorporation by reference.

(a) All of the provisions of §§ 207.251 et seq. (Part 207, Subpart B) of this chapter, relating to mortgages insured under section 207 of the National Housing Act, apply to a mortgage covering a group practice facility insured under title XI of such Act.

(b) For the purposes of this subpart, all references in Part 207 of this chapter to section 207 of the Act shall be construed to refer to title XI of the Act.

(c) All of the definitions in § 244.1 shall apply to this subpart. In addition, as used in this part, the term "contract of insurance" means the agreement evidenced by the Commissioner's insurance endorsement and includes the provisions of this subpart and of the Act.

SUBCHAPTER C—PLANNING ASSISTANCE TO HOUSING SPONSORS

PART 270—LOAN AND GRANT ASSISTANCE FOR PLANNING HOUSING PROJECTS IN APPALACHIA

Sec.

270.1 Statement of applicable law and scope of planning assistance.
270.3 Delegation from Secretary to Assistant Secretary—Federal Housing Commissioner.
270.5 Definitions.
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270.10 Location of proposed project.
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270.27 Maturity of loans—contract provisions.
270.30 Interest on loans.

AUTHORITY: The provisions of this Part 270 issued under sec. 207, 81 Stat. 257; 40 U.S.C. App. 207.

§ 270.1 Statement of applicable law and scope of planning assistance.

Section 207 of the Appalachian Regional Development Act of 1965 authorizes the Secretary of Housing and Urban Development to make loans, under such terms and conditions as he may prescribe, to nonprofit, limited dividend, or cooperative organizations, or to public bodies, for expenses of planning a housing construction or rehabilitation project and for obtaining the financing of such project by an insured mortgage under section 221 or 236 of the National Housing Act. Such project shall be located in an area of the Appalachian region determined by the Appalachian Regional Commission to have significant potential for future growth.

§ 270.3 Delegation from Secretary to Assistant Secretary—Federal Housing Commissioner.

The Secretary has delegated to the Assistant Secretary—Federal Housing Commissioner the authority to execute the powers and functions vested in the Secretary by section 207 of the Appalachian Regional Development Act of 1965. The delegation includes the authority for the Commissioner to redelegate such authority to employees of the Department.

§ 270.5 Definitions.

As used in this part:

(a) "Act" means the Appalachian Regional Development Act of 1965, as amended.

(b) "Commission" means the Appalachian Regional Commission, its Executive Committee, or the Federal Cochairman of such Commission or his authorized representative.

(c) "Commissioner" means the Assistant Secretary—Federal Housing Commissioner or his authorized representative.

(d) "Cooperative organization" means a nonprofit cooperative ownership housing corporation or trust approved by the Commissioner which restricts permanent occupancy of the project to the members of the corporation or trust and which prescribes requirements, approved by the Commissioner, for obtaining and transferring membership.

(e) "Fund" means the Appalachian Housing Fund allocated to the Secretary for carrying out the purposes of this part.

(f) "FNMA" means the Federal National Mortgage Association.

(g) "GNMA" means the Government National Mortgage Association.

(h) "Limited dividend organization" means an entity eligible as a limited distribution mortgagor under section 221 of the National Housing Act and § 221.510 (c) of this title.

(i) "Nonprofit organization" means a corporation or association organized for purposes other than the making of profit or gain for itself or any persons identified therewith and which the Commissioner finds is in no manner controlled or directed by persons or firms seeking to derive profit or gain from its operation.

(j) "Public body" means a Federal instrumentality, a State or political subdivision or an instrumentality thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937.

(k) "Secretary" means the Secretary of Housing and Urban Development or an officer of the Department of Housing and Urban Development empowered to exercise any of the functions of the Secretary under section 207 of the Act.

(l) "Section 221" means section 221 of the National Housing Act.

(m) "Section 221 regulations" means the regulations in Part 221 of this chapter issued to implement section 221 of the National Housing Act.

(n) "Section 236" means section 236 of the National Housing Act.

(o) "Section 236 regulations" means the regulations in Part 236 of this chapter issued to implement section 236 of the National Housing Act.

(p) "State member" means the member of the Appalachian Regional Commission who represents the State in which a proposed housing project is to be located, or his authorized representative.

§ 270.7 Scope of assistance.

The Commissioner may make loans or grants from the fund to encourage and facilitate the construction or rehabilitation of housing in any area of the Appalachian Region determined by the Commission to have significant potential for future growth. The conditions of eligibility for applicants and applications for such loans or grants and the terms and conditions under which the proceeds of such loans and grants may be used are specified in this part.

§ 270.10 Location of proposed project.

The proposed project for which a loan or grant is sought shall be located in the Appalachian region as that term is defined in section 403 of the Appalachian Regional Development Act, as amended (40 U.S.C. Apendix A, sec. 403). The proposed project shall be located in an area of such region determined by the Commission to have significant potential for future growth.

§ 270.13 Filing, processing, and approving applications.

(a) Prior to filing an application for a loan under this part, the applicant shall obtain approval for such filing from the state member. The application shall be filed, on a form prescribed by the Commissioner, with the HUD area or insuring office having jurisdiction over the area in which the applicant proposes to construct or rehabilitate a housing project to be financed with a mortgage insured under section 231 or 236.

(b) Upon a determination by the Commissioner that the financial assistance applied for will carry out the purposes of this part and that an applicant is eligible for such assistance, the application will be submitted to the Commission for final approval.

(c) After review, and upon approval by the Commission, the loan or grant may be disbursed by the Commissioner.

§ 270.15 Eligible applicants.

(a) To be eligible for a loan, an applicant must be a nonprofit, limited dividend, or cooperative organization or a public body.

(b) To be eligible for a grant, an applicant must be a nonprofit or cooperative organization or a public body.

(c) An applicant for a loan or grant shall have available funds or assets considered adequate by the Commissioner to defray no less than 20 percent of the expenses of planning a project and of obtaining a mortgage insured under section 221.

§ 270.17 Use of loan or grant proceeds.

An applicant shall agree, in form satisfactory to the Commissioner, to use the loan proceeds for the expenses of planning a housing or rehabilitation project and for obtaining the financing of such project by a mortgage insured under section 221 or 236. The plans for such project shall contemplate its ownership by one of the following:

(a) The applicant.

(b) A cooperative organization.

(c) A nonprofit organization to be formed and controlled in a manner satisfactory to the Commissioner.

§ 270.20 Maximum amount of loan.

The loan shall not exceed 80 percent of the total cost of both planning the project and of obtaining an insured mortgage under section 221 or 236. These costs may include preliminary surveys and analyses of market needs; preliminary site engineering and architectural fees; options for the purchase of land; FHA and FNMA, or GNMA fees; construction loan fees and discounts; and such other items of cost as may be approved by the Commissioner. The loan shall be disbursed on the basis of 80 percent of the Commissioner's estimate of the total cost for such planning and for obtaining the insured mortgage. The loan contract shall provide for an adjustment of the loan to an amount which will not exceed 80 percent of the actual expenditures for such total cost.

§ 270.23 Maximum amount of grant.

(a) The grant shall not exceed 80 percent of the difference between:

(1) The amount representing all the administrative expenses incident to planning a project added to the cost of obtaining a mortgage under section 221 or 236; and

(2) The amount of such expenses recovered from the proceeds of the insured mortgage.

(b) The administrative expenses incident to planning a project may include preparation of applications to the FHA and FNMA, or GNMA, coordination and management activities, and such other items of administrative expense as may be approved by the Commissioner.

(c) The grant shall be disbursed in an amount determined by applying the formula in paragraph (a) of this section to the Commissioner's estimate of both the expenses that will be incurred and the expenses that will be recovered from mortgage proceeds.

(d) The grant contract shall provide for an adjustment of the grant by applying the formula in paragraph (a) of this section to the actual expenses and the amount of such expenses recovered from mortgage proceeds.

§ 270.25 Waiver of repayment.

The Commissioner may waive the repayment of all or such part of a loan, including interest thereon, that he determines cannot be recovered from the proceeds of a mortgage or mortgages insured under section 221 or 236. No waiver shall be made in connection with a loan to a limited dividend organization.

§ 270.27 Maturity of loans—contract provisions.

The contract for a loan shall provide for repayment by the borrower within 6 months following the first disbursement of funds pursuant to the contract or at such time as the borrower recovers his expenses from the mortgage proceeds, or at such other time as may be fixed by contract with the Commissioner. The Commissioner may extend the time for repayment under such terms and conditions as he may prescribe.

§ 270.30 Interest on loans.

(a) Interest shall not be charged to borrowers other than limited dividend organizations.

(b) Interest charged to a limited dividend organization shall be at the prevailing market rate, which shall be the maximum rate authorized under § 221.518(a) of this title for mortgages insured under section 221. Such rate shall be determined as of the date the insuring office director recommends approval of the application for financial assistance under the Act.

PART 271—LOAN ASSISTANCE FOR PLANNING LOW AND MODERATE INCOME HOUSING

Sec.
271.1 Statement of applicable law and scope of planning assistance.
271.3 Delegation from Secretary to Assistant Secretary-Federal Housing Commissioner.
271.5 Definitions.
271.7 Scope of assistance.
271.13 Filing, processing and approving applications.
271.15 Eligible applicants.
271.17 Use of loan proceeds.
271.20 Maximum amount of loan.
271.25 Waiver of repayment.
271.27 Maturity of loans—contract provisions.
271.30 Interest on loans.

AUTHORITY: The provisions of this Part 271 issued under sec. 106, 82 Stat. 490; 12 U.S.C. 1701z.

§ 271.1 Statement of applicable law and scope of planning assistance.

Section 106(b) of the Housing and Urban Development Act of 1968 authorizes the Secretary of Housing and Urban Development to make loans, under such terms and conditions as he may prescribe, to nonprofit organizations for necessary expenses of planning and obtaining financing for the rehabilitation or construction of housing for low and moderate income families under any federally assisted program.

§ 271.3 Delegation from Secretary to Assistant Secretary-Federal Housing Commissioner.

The Secretary has delegated to the Assistant Secretary-Federal Housing Commissioner the authority to execute the powers and functions vested in the Secretary by section 106(b) of the Housing and Urban Development Act of 1968. The delegation includes the authority for the Commissioner to redelegate such authority to employees of the Department.

§ 271.5 Definitions.

As used in this part:

(a) "Act" means the Housing and Urban Development Act of 1968.

(b) "Commissioner" means the Assistant Secretary-Federal Housing Commissioner or his authorized representative.

(c) "Fund" means the Low and Moderate Income Sponsor Fund.

(d) "Nonprofit organization" means a corporation or association organized for purposes other than the making of profit or gain for itself or any persons identified therewith and which the Commissioner finds is in no manner controlled or directed by persons or firms seeking to derive profit or gain from its operation.

§ 271.7 Scope of assistance.

The Commissioner may make loans from the fund to encourage and facilitate the construction or rehabilitation of housing for low and moderate income families under any federally assisted program. The conditions of eligibility for applicants and applications for such loans and the terms and conditions under which the proceeds of such loans may be used are specified in this part.

§ 271.13 Filing, processing and approving applications.

(a) The application shall be filed, on a form prescribed by the Commissioner, with the HUD area or insuring office having jurisdiction over the area in which the applicant proposes to construct or rehabilitate a housing project for low or moderate income families to be financed with the assistance of any Federal program.

(b) Upon a determination by the area or insuring office director that the financial assistance applied for will carry out the purposes of this part and that an applicant is eligible for such assistance, the application will be submitted to the Regional Administrator for final approval.

(c) After review, and upon approval by the Assistant Commissioner for Multifamily Housing, the proceeds of the loan may be disbursed by the Commissioner.

§ 271.15 Eligible applicants.

(a) To be eligible for a loan, an applicant must be a nonprofit organization.

(b) An applicant for a loan shall have available funds or assets considered adequate by the Commissioner to defray no less than 20 percent of the estimated expenses of planning a project and of obtaining financing under a federally assisted program.

§ 271.17 Use of loan proceeds.

An applicant shall agree, in form satisfactory to the Commissioner, to use the loan proceeds for the expenses of planning the rehabilitation or construction of a project and for obtaining the financing of such project under a federally assisted program. The plans for such project shall contemplate its ownership by the applicant or another nonprofit organization satisfactory to the Commissioner.

§ 271.20 Maximum amount of loan.

The loan shall not exceed 80 percent of the total reasonable and necessary costs expected to be incurred in both planning the project and of obtaining financing under a federally assisted program. These costs may include preliminary surveys and analyses of market needs; preliminary site engineering and architectural fees; options for site acquisition; application and mortgage commitment fees; construction loan fees and discounts; and such other items of cost as may be approved by the Commissioner. The loan proceeds shall be disbursed on the basis of 80 percent of the Commissioner's estimate of the total reasonable costs for such planning and for obtaining such financing. The loan contract shall provide for an adjustment of the loan to an amount which will not exceed 80 percent of the actual expenditures for such total costs.

§ 271.25 Waiver of repayment.

The Commissioner may waive the repayment of all or such part of a loan that he determines cannot be recovered from the proceeds of a permanent loan made to finance the rehabilitation or construction of a housing project.

§ 271.27 Maturity of loans—contract provisions.

The contract for a loan shall provide for repayment by the borrower within 6 months following the first disbursement of funds pursuant to the contract or at such time as the borrower recovers his expenses from the proceeds of the permanent financing, or at such other time as may be fixed by contract with the Commissioner. The Commissioner may extend the time for repayment under such terms and conditions as he may prescribe.

§ 271.30 Interest on loans.

No interest shall be charged to a borrower under the provisions of this part.

SUBCHAPTER D—PUBLICLY FINANCED HOUSING PROGRAMS

PART 275—LOW-RENT PUBLIC HOUSING

Sec.
275.1 Definitions.
275.2 General policy.
275.3 Application for financial assistance (other than leasing program).
275.4 Annual Contributions Contract (other than leasing program).
275.5 Leasing program.
275.6 Private participation.
275.7 Applications; information.
275.8 Federally owned low-rent housing.
Appendix—Prototype Cost Limits for Public Housing.

AUTHORITY: The provisions of this Part 275 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 275.1 Definitions.

For purposes of this part the following terms shall have the meanings ascribed:

(a) *Act.* The United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.).

(b) *State.* Any State of the Union, the District of Columbia, and any Territory, dependency, or possession of the United States.

(c) *Low-rent housing.* Decent, safe, and sanitary dwellings within the financial reach of families of low income, and all necessary appurtenances.

(d) *Families of low income.* Families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.

(e) *Local Authority.* Any State, county, municipality, or other governmental entity or public body which is authorized to engage in the development or administration of low-rent housing or slum clearance. A "Local Authority" is a "public housing agency" as defined in the Act.

(f) *Cooperation agreement.* A contract between a Local Authority and the governing body of the locality, providing for tax exemption, elimination of unsafe and insanitary dwelling units, supplying of public services, and other forms of cooperation by the local government, and for payments in lieu of taxes by the Local Authority, in connection with a low-rent housing project.

§ 275.2 General policy.

The objectives of the program are to promote the general welfare by employing the funds and credit of the United States to assist the States and their political subdivisions to alleviate unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. The objectives are carried out by providing financial assistance, pursuant to contracts, to Local Authorities applying for such assistance in developing and operating low-rent housing projects or for leasing of housing in private accommodations. Applications for financial assistance, if otherwise proper, are approved to the extent permitted by limitations contained in the Act or other statutes.

§ 275.3 Application for financial assistance (other than leasing program).

A Local Authority seeking Federal financial assistance for a low-rent housing project must submit an application and a showing that the Local Authority has been organized in accordance with State law, that there is a need for the proposed low-rent housing which is not being met by private enterprise, and that the governing body of the locality has by resolution approved application for a preliminary loan and has entered into a Cooperation Agreement with the Local Authority satisfactory to the Department of Housing and Urban Development. A Preliminary Loan Contract provides for advances of funds for surveys and planning. Such a contract is tendered by HUD to the Local Authority only after approval by the appropriate Assistant Secretary.

§ 275.4 Annual Contributions Contract (other than leasing program).

An Annual Contributions Contract provides for a loan to assist in the development of a low-rent housing project and for annual contributions to assist in achieving and maintaining the low-rent character of the project. As the basis for such a contract, the Local Authority must submit a plan for its project with a showing of its feasibility, including such matters as description of site, statement of number and types of structures and dwelling units, estimate of development cost, and data supporting all features of the project. The Local Authority must also show that, except in the case of displaced or elderly families, a gap of at least 20 percent has been left between the upper rental limits for the proposed housing and the lowest rents at which private enterprise is providing housing, and is required to include a plan for relocating displaced families. An Annual Contributions Contract is tendered by HUD to the Local Authority only after approval by the appropriate Assistant Secretary.

§ 275.5 Leasing program.

The leasing program involves the use of privately owned housing with the aid of subsidy channeled through the Local Authority. Pursuant to section 23 of the United States Housing Act of 1937 (42 U.S.C. 1421b), HUD is authorized to make annual contributions available to Local Authorities so that privately owned dwellings may be leased for occupancy by low-income families at rents within their means. In such a leasing program, HUD pays annual contributions to cover the deficiency between the rent payable to the owner and the rent which the low-income family can afford to pay. Before dwellings can be provided by leasing under section 23, the local governing body must adopt a resolution approving application of the section 23 provisions to the locality. An application for low-rent housing under section 23 of the Act should include data on the number of units desired, available supply, and need for the housing, amount of financial assistance estimated to be necessary, and financial feasibility of the undertaking.

§ 275.6 Private participation.

(a) Increased opportunities exist for participation of the private sector in the low-rent housing program. These result from the growing use of new methods of providing low-rent housing in addition to the traditional method of new construction. These include the acquisition and rehabilitation of existing housing for low-income occupancy, leasing of existing housing under section 23 (described in § 275.5), as well as the "turnkey" technique and joint enterprise between Local Authorities and private organizations.

(b) Under the "turnkey" technique, a private developer or builder, who has a site or an option, or can obtain one, can approach the Local Authority with a proposal to build in accordance with plans and specifications prepared by his own architect and the usual commercial standards of quality and workmanship. If the proposal is acceptable, they will then enter into a contract under which the Local Authority agrees to purchase the completed property. This contract is backed by HUD's financial assistance commitment to the Local Authority, thereby enabling the developer to secure commercial construction financing in his usual manner. The "turnkey" technique may also be used in the rehabilitation of existing housing; instead of a Local Authority itself acquiring and rehabilitating existing dwellings, the Local Authority, under the "turnkey" approach, can contract with a private builder or rehabilitator to purchase from him certain dwellings which he has acquired and rehabilitated to HUD standards.

(c) Joint enterprise between Local Authorities and private organizations may consist, for example, of joint undivided ownership of housing by the Local Authority and a private organization, with moderate-income families housed in units used by the private organization and low-income tenants housed in other units with the aid of HUD annual contributions channeled through the Local Authority. Another form of joint enterprise would be for a private organization having full ownership of housing to use a portion of its units to house moderate-income families with the remaining units leased for occupancy by low-income families with the aid of HUD subsidy channeled through the Local Authority.

§ 275.7 Applications; information.

(a) A Local Authority applying for financial assistance should submit its applications and all related documents to the appropriate HUD Regional Office. Application forms and other forms, procedures, policy statements, and materials issued by HUD for the use or guidance of Local Authorities may be obtained through the appropriate HUD Regional Office; however, after approval of its application, a Local Authority will be sent copies of all relevant materials without specific request.

(b) Information with respect to methods of providing low-rent housing with private participation may be obtained from the Local Authority in the locality or from the appropriate HUD Regional Office. Information may also be obtained from the Department of Housing and Urban Development, Washington, D.C. 20410.

§ 275.8 Federally owned low-rent housing.

Low-rent housing projects owned by the Federal Government have been disposed of except for project Cherokee Terrace in Enid, Okla. Information on final action on applications for tenancy and information as to final action of the Housing Manager in the procurement

of supplies and materials for which such a Manager is authorized to contract shall be kept at the project office and made available to the public by the Housing Manager. Inquiries concerning the project and requests for statements of policy, procedures, and forms should also be directed to the Housing Manager. The address is: Cherokee Terrace, 619 East Main Street, Enid, Okla. 73701.

APPENDIX—PROTOTYPE COST LIMITS FOR PUBLIC HOUSING

AUTHORITY: The provisions of this Appendix issued under sec. 15(5), 50 Stat. 888, as amended, sec. 7(d), 79 Stat. 670; 42 U.S.C. 1415(5), 3535(d). Secy.'s del. of auth., 36 F.R. 5007, Mar. 16, 1971.

A. *Unit prototype cost.* 1. Prototype cost comprises the cost of Dwelling Structures, Account No. 1460, and Dwelling Equipment, Account No. 1465, as described in Low-Rent Housing Accounting Handbook RHA-7510.1, ch. 3, sec. 15, which include their proportionate share of the builder's fee and overhead, insurance, Social Security, taxes, and bonds.

2. Prototype cost does not include the costs of site acquisition, site improvement, nondwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection and similar costs), relocation, interest or local authority administration, all of which are described in Low-Rent Housing Handbook RHA-7510.1, ch. 3, sec. 15.

3. Prototype cost takes into account compliance with applicable FHA Minimum Property Standards, and Planning and Design Criteria described in RHA-7410.1, Chapter 3 (as modified by Circular FHA 7410.2). Current copies of Handbook RHA-7510.1 are maintained and available for public inspection in the Office of Public Information, Room 1202, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20411, and in each of the Department's Regional, Area, and FHA Insuring Offices.

4. Prototype cost takes into account the extra durability required for economical maintenance of assisted housing, and the provision of amenities designed to guarantee safe and healthy family life.

B. *Project prototype costs.* 1. The Project Prototype Cost is the sum of the unit prototype costs for the dwellings of various sizes and types comprising the project. The total cost of dwelling construction and equipment (Accounts 1460 and 1465), and the related proportionate share of the contingency established by any development cost budget shall not exceed the sum of 105 percent of the unit prototype costs for the dwellings to be constructed.

2. A request for approval of a cost which exceeds the above 105 percent cost limitation but which is not in excess of the statutory 110 percent may be submitted to the Assistant Secretary for Housing Production and Mortgage Credit through the Area Office Director and the Regional Administrator. Such requests must be supported by a detailed justification with respect to the particular project, taking into account all of the circumstances involved and demonstrating that such approval is necessary and desirable in carrying out the objectives of the Act.

3. Development cost budgets, awards of Main Construction Contracts, Preliminary Contracts of Sale, and Contracts of Sale for turnkey projects will not be approved unless an appropriate prototype cost for the area is published in the FEDERAL REGISTER.

PROTOTYPE PER UNIT COST SCHEDULE

REGION I

	Number of bedrooms						
	0	1	2	3	4	5	6
Hartford Conn.:							
Detached and semidetached	9,400	11,350	13,050	16,700	20,100	22,350	23,400
Row dwellings	8,650	10,800	13,350	15,650	19,100	21,050	22,200
Walk-up	7,100	9,050	12,100	14,200	16,650	18,250	19,150
Elevator-structure	11,800	13,700	17,450				
Danbury, Conn.:							
Detached and semidetached	9,000	10,850	13,200	15,000	19,200	21,350	22,300
Row dwellings	8,250	10,000	12,750	15,200	18,250	20,250	21,200
Walk-up	7,250	9,100	11,850	13,700	15,800	17,450	18,350
Elevator-structure	11,000	13,450	17,100				
New Milford, Conn.:							
Detached and semidetached	9,000	10,850	13,200	15,000	19,200	21,350	22,300
Row dwellings	8,250	10,000	12,750	15,200	18,250	20,250	21,200
Walk-up	7,250	9,100	11,850	13,700	15,800	17,450	18,350
Elevator-structure	11,000	13,450	17,100				
New Haven, Conn.:							
Detached and semidetached	8,650	10,800	13,200	15,000	19,150	21,200	22,200
Row dwellings	8,000	10,000	12,700	15,150	18,200	20,200	21,200
Walk-up	7,250	9,100	11,800	13,650	15,750	17,250	18,250
Elevator-structure	11,450	13,900	16,850				
Bridgeport, Conn.:							
Detached and semidetached	9,650	11,600	14,150	16,000	20,400	22,700	23,750
Row dwellings	9,100	10,950	13,550	16,150	19,400	21,600	22,600
Walk-up	7,800	9,700	12,000	14,050	16,850	18,600	19,450
Elevator-structure	11,800	13,750	17,450				
New London, Conn.:							
Detached and semidetached	9,200	11,100	13,650	16,250	19,650	21,850	22,900
Row dwellings	8,750	10,650	13,050	15,550	18,700	20,850	21,750
Walk-up	7,550	9,350	11,850	14,000	16,200	17,850	18,750
Elevator-structure	11,000	13,000	16,000				
Windham, Conn.:							
Detached and semidetached	9,200	11,100	13,650	16,250	19,650	21,850	22,900
Row dwellings	8,750	10,650	13,050	15,550	18,700	20,850	21,750
Walk-up	7,550	9,350	11,850	14,000	16,200	17,850	18,750
Elevator-structure	11,000	13,000	16,000				
Stamford, Conn.:							
Detached and semidetached	9,250	11,150	13,750	16,450	19,800	22,000	23,050
Row dwellings	8,800	10,650	13,150	15,650	18,800	20,950	21,900
Walk-up	7,600	9,400	11,900	14,150	16,300	17,950	18,850
Elevator-structure	11,900	13,850	17,550				
Ridgefield, Conn.:							
Detached and semidetached	9,250	11,150	13,750	16,450	19,800	22,000	23,050
Row dwellings	8,800	10,650	13,150	15,650	18,800	20,950	21,900
Walk-up	7,600	9,400	11,900	14,150	16,300	17,950	18,850
Elevator-structure	11,900	13,850	17,550				
Norwich, Conn.:							
Detached and semidetached	9,050	10,900	13,400	16,050	19,300	21,500	22,500
Row dwellings	8,600	10,400	12,850	15,300	18,350	20,450	21,400
Walk-up	7,400	9,200	11,650	13,800	15,900	17,650	18,450
Elevator-structure	10,600	12,500	15,650				
Bangor, Maine:							
Detached and semidetached	8,350	10,050	12,400	14,800	17,800	19,800	20,700
Row dwellings	7,850	9,550	11,800	14,050	16,950	18,850	19,700
Walk-up	6,800	8,450	10,700	12,700	14,700	16,150	17,000
Elevator-structure	11,750	13,650	17,300				
Augusta, Maine:							
Detached and semidetached	8,000	10,350	12,800	15,250	18,850	20,400	21,350
Row dwellings	8,000	9,850	12,150	14,600	17,000	19,450	20,300
Walk-up	7,000	8,700	11,100	13,100	15,150	16,650	17,550
Elevator-structure	12,150	14,150	17,000				
Brunswick, Maine:							
Detached and semidetached	8,650	10,250	12,700	15,150	18,200	20,250	21,150
Row dwellings	8,150	9,750	12,050	14,350	17,350	19,250	20,150
Walk-up	6,650	8,050	11,000	13,000	15,050	16,600	17,450
Elevator-structure	12,000	13,950	17,700				
Lewiston, Maine:							
Detached and semidetached	8,650	10,250	12,700	15,150	18,200	20,250	21,150
Row dwellings	8,150	9,750	12,050	14,350	17,350	19,250	20,150
Walk-up	6,650	8,050	11,000	13,000	15,050	16,600	17,450
Elevator-structure	12,000	13,950	17,700				
Portland, Maine:							
Detached and semidetached	8,650	10,250	12,700	15,150	18,200	20,250	21,150
Row dwellings	8,150	9,750	12,050	14,350	17,350	19,250	20,150
Walk-up	6,650	8,050	11,000	13,000	15,050	16,600	17,450
Elevator-structure	12,100	14,050	17,800				
Waterville, Maine:							
Detached and semidetached	8,250	9,950	12,350	14,850	17,900	19,900	20,850
Row dwellings	7,850	9,450	11,850	13,900	16,750	18,650	19,600
Walk-up	6,700	8,250	10,650	12,650	14,650	15,950	16,800
Elevator-structure	11,600	13,600	17,100				

PROTOTYPE PER UNIT COST SCHEDULE

REGION I—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Boston, Mass.:							
Detached and semi-detached	11,900	14,200	15,750	18,800	22,650	25,150	26,350
Row dwellings	11,350	13,500	15,000	17,900	21,550	24,000	25,050
Walk-up	11,250	13,850	15,750	18,700	21,600	23,800	24,950
Elevator-structure	13,850	16,100	20,400				
Cape Cod, Mass.:							
Detached and semi-detached	11,350	13,550	15,050	17,950	21,600	24,000	25,150
Row dwellings	10,850	12,900	14,300	17,100	20,550	22,900	23,900
Walk-up	10,750	13,200	15,050	17,850	20,600	22,700	23,800
Elevator-structure	13,200	15,350	19,450				
Pittsfield, Mass.:							
Detached and semi-detached	11,250	13,450	14,900	17,800	21,400	23,800	24,900
Row dwellings	10,750	12,750	14,200	16,900	20,400	22,700	23,700
Walk-up	10,650	13,100	14,900	17,700	20,400	22,500	23,600
Elevator-structure	13,100	15,200	19,300				
Springfield, Mass.:							
Detached and semi-detached	11,600	13,800	15,300	18,300	22,050	24,450	25,650
Row dwellings	11,050	13,150	14,600	17,400	20,950	23,350	24,350
Walk-up	10,950	13,450	15,300	18,200	21,000	23,150	24,250
Elevator-structure	13,450	15,650	19,850				
Worcester, Mass.:							
Detached and semi-detached	11,450	13,700	15,200	18,100	21,850	24,250	25,400
Row dwellings	10,950	13,000	14,450	17,250	20,750	23,150	24,150
Walk-up	10,850	13,350	15,200	18,000	20,800	22,950	24,050
Elevator-structure	13,350	15,500	19,650				
Fall River, Mass.:							
Detached and semi-detached	11,450	13,650	15,150	18,050	21,750	24,150	25,300
Row dwellings	10,900	12,950	14,400	17,200	20,700	23,050	24,050
Walk-up	10,800	13,300	15,150	17,950	20,750	22,850	23,950
Elevator-structure	13,500	15,700	19,900				
Lowell, Mass.:							
Detached and semidetached	11,700	13,950	15,450	18,450	22,250	24,700	25,900
Row dwellings	11,150	13,250	14,750	17,600	21,150	23,550	24,600
Walk-up	11,050	13,600	15,450	18,350	21,200	23,350	24,500
Elevator-structure	13,550	15,750	20,000				
Salem, Mass.:							
Detached and semidetached	11,350	13,550	15,000	17,900	21,600	24,000	25,100
Row dwellings	10,800	12,850	14,300	17,050	20,550	22,900	23,900
Walk-up	10,750	13,200	15,000	17,850	20,600	22,700	23,800
Elevator-structure	13,350	15,500	19,650				
Manchester, N.H.:							
Detached and semidetached	9,200	11,100	13,650	16,350	19,650	21,850	22,900
Row dwellings	8,750	10,550	13,050	15,550	18,700	20,850	21,750
Walk-up	7,500	9,350	11,850	14,000	16,200	17,850	18,750
Elevator-structure	11,550	13,450	17,000				
Keene, N.H.:							
Detached and semidetached	8,750	10,550	13,000	15,550	18,700	20,800	21,800
Row dwellings	8,350	10,050	12,450	14,800	17,800	19,850	20,700
Walk-up	7,150	8,900	11,300	13,350	16,450	17,000	17,850
Elevator-structure	11,400	13,300	16,800				
Nashua, N.H.:							
Detached and semidetached	8,850	10,700	13,150	15,750	18,950	21,050	22,100
Row dwellings	8,450	10,150	12,600	15,000	18,050	20,100	20,950
Walk-up	7,250	9,000	11,450	13,500	16,600	17,200	18,100
Elevator-structure	11,550	13,450	17,000				
Portsmouth, N.H.:							
Detached and semidetached	8,250	9,950	12,200	14,600	17,550	19,550	20,500
Row dwellings	7,850	9,450	11,650	13,900	16,750	18,650	19,450
Walk-up	6,700	8,300	10,000	12,500	14,600	15,950	16,750
Elevator-structure	11,400	13,300	16,800				
Dover, N.H.:							
Detached and semidetached	8,850	10,700	13,150	15,750	18,950	21,050	22,100
Row dwellings	8,450	10,150	12,600	15,000	18,050	20,100	20,950
Walk-up	7,250	9,000	11,450	13,500	16,600	17,200	18,100
Elevator-structure	11,400	13,300	16,800				
Concord, N.H.:							
Detached and semidetached	8,250	9,950	12,200	14,600	17,550	19,550	20,500
Row dwellings	7,850	9,450	11,650	13,900	16,750	18,650	19,450
Walk-up	6,700	8,300	10,000	12,500	14,600	15,950	16,750
Elevator-structure	11,000	13,400	16,900				
Providence, R.I.:							
Detached and semidetached	10,700	12,800	14,200	16,950	20,400	22,650	23,700
Row dwellings	10,200	12,100	13,500	16,100	19,400	21,550	22,550
Walk-up	10,100	12,450	14,200	16,800	19,400	21,400	22,450
Elevator-structure	12,000	14,000	17,600				

PROTOTYPE PER UNIT COST SCHEDULE

REGION I—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Newport, R.I.:							
Detached and semidetached	10,800	12,900	14,350	17,100	20,600	22,850	23,950
Row dwellings	10,300	12,200	13,650	16,250	19,600	21,750	22,750
Walk-up	10,200	12,550	14,350	16,950	19,600	21,600	22,650
Elevator-structure	12,100	14,150	17,800				
Westerly, R.I.:							
Detached and semidetached	10,800	12,900	14,350	17,100	20,600	22,850	23,950
Row dwellings	10,300	12,200	13,650	16,250	19,600	21,750	22,750
Walk-up	10,200	12,550	14,350	16,950	19,600	21,600	22,650
Elevator-structure	12,100	14,150	17,800				
Pawtucket, R.I.:							
Detached and semidetached	10,700	12,800	14,200	16,950	20,400	22,650	23,700
Row dwellings	10,200	12,100	13,500	16,100	19,400	21,550	22,550
Walk-up	10,100	12,450	14,200	16,800	19,400	21,400	22,450
Elevator-structure	11,950	13,950	17,600				
Woonsocket, R.I.:							
Detached and semidetached	10,600	12,650	14,050	16,750	20,150	22,400	23,450
Row dwellings	10,100	11,950	13,350	15,900	19,200	21,300	22,300
Walk-up	10,000	12,300	14,050	16,600	19,200	21,150	22,200
Elevator-structure	11,700	13,650	17,200				
Burlington, Vt.:							
Detached and semidetached	8,400	10,100	12,450	14,850	17,900	19,900	20,850
Row dwellings	8,000	9,600	11,900	14,150	17,000	18,950	19,800
Walk-up	6,850	8,500	10,800	12,750	14,750	16,250	17,050
Elevator-structure	10,850	12,600	16,000				
Bennington, Vt.:							
Detached and semidetached	8,350	10,000	12,350	14,750	17,750	19,750	20,700
Row dwellings	7,950	9,500	11,800	14,050	16,850	18,800	19,650
Walk-up	6,800	8,450	10,700	12,650	14,650	16,100	16,900
Elevator-structure	10,750	12,500	15,850				
Rutland, Vt.:							
Detached and semidetached	8,250	9,950	12,250	14,600	17,600	19,600	20,500
Row dwellings	7,850	9,450	11,700	13,900	16,700	18,650	19,500
Walk-up	6,750	8,350	10,600	12,550	14,500	16,000	16,750
Elevator-structure	10,750	12,500	15,900				
Montpelier, Vt.:							
Detached and semidetached	8,150	9,800	12,100	14,450	17,400	19,350	20,300
Row dwellings	7,800	9,350	11,600	13,750	16,550	18,450	19,250
Walk-up	6,650	8,250	10,500	12,400	14,350	15,800	16,600
Elevator-structure	10,850	12,600	16,000				
Brattleboro, Vt.:							
Detached and semidetached	8,100	9,750	12,000	14,300	17,250	19,200	20,100
Row dwellings	7,700	9,250	11,450	13,650	16,400	18,250	19,100
Walk-up	6,600	8,200	10,400	12,300	14,200	15,650	16,450
Elevator-structure	10,450	12,150	15,400				

PROTOTYPE PER UNIT COST SCHEDULE

REGION II

	Number of bedrooms						
	0	1	2	3	4	5	6
Camden, N.J.:							
Detached and semidetached	11,150	13,350	14,800	17,650	21,300	23,650	24,800
Row dwellings	10,650	12,750	14,150	16,850	20,200	22,550	23,550
Walk-up	9,100	11,250	12,800	15,150	17,550	19,300	20,300
Elevator-structure	14,250	16,550	20,950				
Atlantic City, N.J.:							
Detached and semidetached	10,750	12,850	14,250	17,000	20,600	22,700	23,850
Row dwellings	10,250	12,250	13,600	16,200	19,450	21,700	22,650
Walk-up	8,700	10,850	12,300	14,000	16,400	18,000	19,000
Elevator-structure	13,800	16,000	20,200				
Burlington, N.J.:							
Detached and semidetached	11,200	13,400	14,850	17,700	21,350	23,700	24,850
Row dwellings	10,700	12,800	14,200	16,900	20,250	22,600	23,600
Walk-up	9,150	11,200	12,850	15,200	17,600	19,350	20,400
Elevator-structure	14,250	16,600	21,050				

PROTOTYPE PER UNIT COST SCHEDULE

REGION II—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Gloucester, N.J.:							
Detached and semidetached	11,150	13,350	14,800	17,650	21,300	23,650	24,800
Row dwellings	10,650	12,750	14,150	16,850	20,200	22,550	23,550
Walk-up	9,100	11,250	12,800	15,150	17,550	19,300	20,350
Elevator-structure	14,250	16,550	20,950				
Trenton, N.J.:							
Detached and semidetached	11,350	13,600	15,100	18,000	21,700	24,100	25,300
Row dwellings	10,850	13,000	14,400	17,200	20,600	23,000	24,000
Walk-up	9,300	11,450	13,050	15,450	17,900	19,650	20,750
Elevator-structure	14,550	16,900	21,400				
Vineland, N.J.:							
Detached and semidetached	11,500	13,750	15,250	18,200	21,950	24,350	25,550
Row dwellings	10,950	13,150	14,550	17,350	20,800	23,250	24,250
Walk-up	9,350	11,600	13,200	15,600	18,100	19,900	20,950
Elevator-structure	14,700	17,050	21,600				
Newark, N.J.:							
Detached and semidetached	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure	13,200	15,350	19,400				
Asbury Park, N.J.:							
Detached and semidetached	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure	12,050	14,700	18,600				
North Bergen, N.J.:							
Detached and semidetached	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure	13,200	15,350	19,400				
Freehold, N.J.:							
Detached and semidetached	10,900	13,000	14,450	17,200	20,700	23,000	24,100
Row dwellings	10,450	12,400	13,750	16,350	19,700	21,950	22,950
Walk-up	10,350	12,850	14,600	17,300	20,050	22,100	23,250
Elevator-structure	12,050	14,700	18,600				
Albany, N.Y.:							
Detached and semidetached	11,500	13,750	15,200	18,150	21,900	24,300	25,500
Row dwellings	11,000	13,150	14,550	17,300	20,800	23,200	24,250
Walkup	10,700	13,250	15,050	17,850	20,700	22,700	23,950
Elevator structure	15,650	18,150	23,000				
Glen Falls, N.Y.:							
Detached and semidetached	10,950	13,100	14,500	17,300	20,850	23,150	24,300
Row dwellings	10,500	12,500	13,850	16,500	19,800	22,100	23,100
Walkup	10,300	12,650	14,350	17,050	19,700	21,500	22,600
Elevator structure	14,000	17,000	21,000				
Massena, N.Y.:							
Detached and semidetached	11,050	13,250	14,600	17,450	21,050	23,350	24,550
Row dwellings	10,600	12,600	14,000	16,650	20,000	22,300	23,350
Walkup	10,300	12,750	14,500	17,150	19,900	21,850	23,050
Elevator structure	15,050	17,450	22,100				
Plattsburgh, N.Y.:							
Detached and semidetached	10,950	13,100	14,500	17,300	20,850	23,150	24,300
Row dwellings	10,500	12,500	13,850	16,500	19,800	22,100	23,100
Walkup	10,300	12,650	14,350	17,000	19,700	21,500	22,600
Elevator structure	14,000	17,000	21,050				
Syracuse, N.Y.:							
Detached and semidetached	11,500	13,850	15,300	18,300	22,100	24,500	25,700
Row dwellings	11,100	13,200	14,650	17,450	20,950	23,400	24,450
Walkup	10,800	13,350	15,150	18,000	20,850	22,900	24,150
Elevator structure	15,750	18,300	23,200				
Poughkeepsie, N.Y.:							
Detached and semidetached	11,850	14,200	15,700	18,750	22,600	25,100	26,300
Row dwellings	11,350	13,500	15,000	17,850	21,450	23,950	25,050
Walkup	11,050	13,700	15,550	18,450	21,350	23,450	24,700
Elevator structure	16,150	18,700	23,700				

PROTOTYPE PER UNIT COST SCHEDULE

REGION II—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Watertown, N.Y.:							
Detached and semidetached	11,400	13,650	15,100	18,000	21,700	24,100	25,300
Row dwellings	10,900	13,000	14,450	17,150	20,650	23,000	24,050
Walkup	10,600	13,150	14,950	17,700	20,550	22,500	23,750
Elevator-structure	15,400	17,850	22,050				
Schenectady, N.Y.:							
Detached and semidetached	11,500	13,750	15,200	18,150	21,900	24,300	25,500
Row dwellings	11,000	13,100	14,550	17,300	20,800	23,200	24,250
Walkup	10,700	13,250	15,050	17,850	20,700	22,700	23,950
Elevator-structure	15,650	18,150	23,000				
Buffalo, N.Y.:							
Detached and semidetached	11,150	13,350	14,800	17,700	21,300	23,650	24,800
Row dwellings	11,150	13,350	14,800	17,600	21,150	23,600	24,650
Walkup	7,900	9,850	12,400	14,700	17,050	18,750	19,750
Elevator-structure	14,000	16,300	20,600				
Rochester, N.Y.:							
Detached and semidetached	10,850	13,000	14,400	17,250	20,750	23,050	24,150
Row dwellings	10,850	13,000	14,400	17,150	20,600	23,000	24,000
Walkup	7,700	9,600	12,050	14,300	16,600	18,250	19,250
Elevator-structure	13,700	15,950	20,150				
Binghamton, N.Y.:							
Detached and semidetached	10,800	12,950	14,350	17,150	20,650	22,900	24,000
Row dwellings	10,800	12,950	14,350	17,050	20,500	22,850	23,900
Walkup	7,650	9,550	12,000	14,250	16,600	18,150	19,150
Elevator-structure	13,650	15,900	20,100				
Ithaca, N.Y.:							
Detached and semidetached	10,700	12,800	14,200	17,000	20,450	22,700	23,800
Row dwellings	10,700	12,800	14,200	16,900	20,300	22,650	23,650
Walkup	7,600	9,450	11,900	14,100	16,350	18,000	18,950
Elevator-structure	13,550	15,800	19,950				
Jamestown, N.Y.:							
Detached and semidetached	10,850	13,000	14,400	17,200	20,700	23,000	24,100
Row dwellings	10,850	13,000	14,400	17,200	20,700	22,950	23,950
Walkup	7,700	9,600	12,050	14,300	16,550	18,250	19,200
Elevator-structure	13,600	15,800	20,000				
New York City, N.Y.:							
Detached and semidetached	13,750	16,450	18,250	21,850	26,250	29,150	30,650
Row dwellings	13,200	15,700	17,450	20,750	24,900	27,750	29,050
Walk-up	14,300	17,750	20,150	23,850	27,650	30,400	32,000
Elevator-structure	19,650	22,700	25,800	29,050	35,900	38,200	
Nassau County (Hempstead, N.Y.):							
Detached and semidetached	13,250	16,000	17,750	21,200	25,500	28,300	29,700
Row dwellings	12,850	15,250	16,950	20,150	24,200	26,950	28,300
Walk-up	13,900	17,250	19,600	23,150	26,850	29,750	31,100
Elevator-structure	19,350	22,350	25,400	29,000	35,350	37,650	
Putnam County, N.Y.:							
Detached and semidetached	12,500	14,950	16,650	19,800	23,850	26,450	27,750
Row dwellings	12,000	14,250	15,850	18,900	22,900	25,500	26,850
Walk-up	13,000	16,100	18,500	21,650	25,100	27,600	29,050
Elevator-structure	18,250	21,050	23,950	28,700	33,800	35,450	
Suffolk County, N.Y:							
Detached and semidetached	13,250	15,850	17,600	21,050	25,500	28,100	29,450
Row dwellings	12,750	15,150	16,850	20,000	24,000	26,750	28,000
Walk-up	13,800	17,100	19,450	23,000	26,650	29,500	30,850
Elevator-structure	19,350	22,400	25,450	30,000	35,400	37,650	
Westchester County, N.Y.:							
Detached and semidetached	12,600	15,000	16,650	20,250	24,600	27,100	28,400
Row dwellings	12,250	14,600	16,200	19,650	23,150	25,800	27,100
Walk-up	13,300	16,200	18,700	22,150	25,700	28,250	29,750
Elevator-structure	18,650	21,850	24,700	29,450	34,100	36,300	
Orange County, N.Y.:							
Detached and semidetached	13,350	15,950	17,700	21,150	25,450	28,250	29,600
Row dwellings	12,800	15,200	16,900	20,100	24,150	26,800	28,150
Walk-up	13,850	17,200	19,650	23,150	26,800	29,600	31,050
Elevator-structure	19,650	22,600	25,600	30,650	35,900	37,850	

PROTOTYPE PER UNIT COST SCHEDULE

REGION II—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Rockland County, N.Y.:							
Detached and semidetached	13,250	15,350	17,550	20,950	25,250	28,050	29,400
Row dwellings	12,700	15,100	16,800	19,950	23,950	26,700	27,950
Walk-up	13,750	17,100	19,400	22,950	26,600	29,250	30,800
Elevator-structure	19,100	22,100	25,100	30,100	34,900	37,150	
San Juan, P.R.:							
Detached and semidetached	9,500	11,350	12,600	15,050	18,100	20,100	21,100
Row dwellings	9,100	10,850	12,050	14,300	17,200	19,150	20,050
Walkup	8,100	9,950	11,350	13,450	15,600	17,150	18,050
Elevator-structure	10,650	12,400	15,700				
Ponce, P.R.:							
Detached and semidetached	9,550	11,400	12,650	15,100	18,150	20,200	21,200
Row dwellings	9,150	10,900	12,100	14,350	17,250	19,200	20,100
Walkup	8,150	10,000	11,400	13,500	15,650	17,200	18,120
Elevator-structure	10,700	12,450	15,800				
Mayaquez, P.R.:							
Detached and semidetached	9,550	11,400	12,650	15,100	18,150	20,200	21,200
Row dwellings	9,150	10,900	12,100	14,350	17,250	19,200	20,100
Walkup	8,150	10,000	11,400	13,500	15,650	17,200	18,120
Elevator-structure	10,700	12,450	15,800				
Arecibo, P.R.:							
Detached and semidetached	9,550	11,400	12,650	15,100	18,150	20,200	21,200
Row dwellings	9,150	10,900	12,100	14,350	17,250	19,200	20,100
Walkup	8,150	10,000	11,400	13,500	15,650	17,200	18,120
Elevator-structure	10,700	12,450	15,800				
St. Thomas, V.I.:							
Detached and semidetached	12,200	14,600	16,200	19,350	23,300	25,850	27,150
Row dwellings	11,700	13,950	15,500	18,400	22,150	24,650	25,800
Walkup	10,400	12,800	14,600	17,300	20,100	22,050	23,250
Elevator-structure	13,300	15,500	19,650				
St. Croix, V.I.:							
Detached and semidetached	11,900	14,250	15,800	18,850	22,700	25,200	26,450
Row dwellings	11,400	13,600	15,100	17,950	21,550	24,000	25,150
Walkup	10,150	12,500	14,250	16,850	19,550	21,500	22,650
Elevator-structure	12,950	15,100	19,150				
Charlotte Amalie, V.I.:							
Detached and semidetached	12,300	14,700	16,300	19,500	23,450	26,050	27,350
Row dwellings	11,800	14,050	15,600	18,500	22,300	24,800	26,000
Walkup	10,500	12,900	14,700	17,400	20,200	22,200	23,400
Elevator-structure	13,400	15,600	19,750				

PROTOTYPE PER UNIT COST SCHEDULE

REGION III

	Number of bedrooms						
	0	1	2	3	4	5	6
Wilmington, Del.:							
Detached and semidetached	8,400	10,200	12,500	14,950	18,000	20,050	20,950
Row dwellings	8,000	9,700	11,950	14,250	17,150	19,050	19,900
Walk-up	6,850	8,650	10,850	12,800	14,850	16,350	17,200
Elevator-structure	11,350	13,150	16,700				
Dover, Del.:							
Detached and semidetached	8,450	10,300	12,600	15,050	18,150	20,200	21,100
Row dwellings	8,050	9,800	12,050	14,350	17,300	19,200	20,050
Walk-up	6,100	8,000	10,050	12,000	14,050	16,000	17,350
Elevator-structure	11,350	13,150	16,700				
Washington, D.C.:							
Detached and semidetached	10,400	12,450	13,750	16,450	19,850	22,050	23,000
Row dwellings	9,850	11,850	13,100	15,050	18,850	20,950	21,850
Walk-up	8,250	10,150	11,050	13,700	15,[illegible]	17,000	18,400
Elevator-structure	12,750	24,800	18,750				
Baltimore, Md.:							
Detached and semidetached	10,000	12,000	13,050	16,650	20,000	22,350	23,300
Row dwellings	10,050	12,000	13,300	15,000	19,100	21,250	22,250
Walk-up	8,700	10,750	12,200	14,450	16,750	18,400	19,400
Elevator-structure	13,850	16,100	20,345				
Aberdeen, Md.:							
Detached and semidetached	10,000	12,000	13,050	16,650	20,000	22,350	23,300
Row dwellings	10,050	12,000	13,300	15,000	19,100	21,250	22,250
Walk-up	8,700	10,750	12,200	14,450	16,750	18,400	19,400
Elevator-structure	13,850	16,100	20,345				

PROTOTYPE PER UNIT COST SCHEDULE

REGION III—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Hagerstown, Md.:							
Detached and semidetached	10,050	13,100	14,500	17,350	20,800	23,250	24,250
Row dwellings	10,450	12,550	13,850	16,550	19,900	22,100	23,150
Walk-up	9,050	11,200	12,700	15,050	17,450	19,150	20,200
Elevator-structure	14,400	16,750	21,200				
Salisbury, Md.:							
Detached and semidetached	10,600	12,750	14,100	16,800	20,200	22,550	23,550
Row dwellings	10,150	12,150	13,450	16,050	19,300	21,450	22,500
Walk-up	8,800	10,850	12,300	14,600	16,900	18,600	19,600
Elevator-structure	14,000	16,250	20,600				
Annapolis, Md.:							
Detached and semidetached	10,100	12,100	13,400	16,000	19,250	21,500	22,400
Row dwellings	9,650	11,600	12,800	15,300	18,350	20,450	21,400
Walk-up	8,350	10,350	11,750	13,900	16,100	17,700	18,650
Elevator-structure	13,300	15,500	19,600				
Cambridge, Md.:							
Detached and semidetached	10,100	12,150	13,450	16,050	19,300	21,550	22,450
Row dwellings	9,700	11,600	12,800	15,350	18,400	20,500	21,450
Walk-up	8,400	10,350	11,750	13,950	16,150	17,750	18,700
Elevator-structure	13,350	15,500	19,650				
Cumberland, Md.:							
Detached and semidetached	9,900	11,900	13,150	15,700	18,850	21,100	22,000
Row dwellings	9,500	11,350	12,550	15,000	18,000	20,050	21,000
Walk-up	8,200	10,150	11,500	13,650	15,800	17,350	18,300
Elevator-structure	13,050	15,200	19,250				
Frederick, Md.:							
Detached and semidetached	10,150	12,200	13,500	16,100	19,350	21,650	22,550
Row dwellings	9,750	11,650	12,900	15,400	18,500	20,600	21,550
Walk-up	8,450	10,400	11,800	14,000	16,200	17,800	18,800
Elevator-structure	13,400	15,600	19,750				
Philadelphia, Pa.:							
Detached and semidetached	9,550	11,550	14,200	16,950	20,400	22,750	23,750
Row dwellings	9,100	11,000	13,550	16,150	19,450	21,650	22,600
Walk-up	7,800	9,700	12,300	14,550	16,850	18,550	19,500
Elevator-structure	12,700	14,750	18,700				
Allentown, Pa.:							
Detached and semidetached	9,250	11,200	13,800	16,450	19,800	22,100	23,050
Row dwellings	8,850	10,700	13,150	15,700	18,900	21,000	21,950
Walk-up	7,550	9,400	11,950	14,150	16,350	18,000	18,950
Elevator-structure	11,900	13,850	17,550				
Bellefonte, Pa.:							
Detached and semidetached	9,750	11,750	14,450	17,250	20,800	23,200	24,200
Row dwellings	9,250	11,200	13,800	16,450	19,800	22,050	23,050
Walk-up	7,950	9,900	12,550	14,800	17,150	18,900	19,850
Elevator-structure	12,650	14,700	18,600				
Harrisburg, Pa.:							
Detached and semidetached	9,300	11,250	13,850	16,550	19,900	22,200	23,150
Row dwellings	8,900	10,750	13,200	15,750	18,950	21,100	22,050
Walk-up	7,600	9,450	12,000	14,200	16,450	18,100	19,000
Elevator-structure	12,100	14,050	17,800				
Lancaster, Pa.:							
Detached and semidetached	9,050	10,950	13,500	16,100	19,350	21,600	22,550
Row dwellings	8,650	10,450	12,850	15,350	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,600	18,500
Elevator-structure	11,000	13,850	17,550				
York, Pa.:							
Detached and semidetached	9,050	10,950	13,500	16,100	19,350	21,600	22,550
Row dwellings	8,650	10,450	12,850	15,350	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,600	18,500
Elevator-structure	11,000	13,850	17,550				
Pottstown, Pa.:							
Detached and semidetached	9,050	10,950	13,500	16,100	19,350	21,600	22,550
Row dwellings	8,650	10,450	12,850	15,350	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,600	18,500
Elevator-structure	11,000	13,850	17,550				
Reading, Pa.:							
Detached and semidetached	9,050	10,950	13,500	16,100	19,350	21,600	22,550
Row dwellings	8,650	10,450	12,850	15,350	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,600	18,500
Elevator-structure	11,000	13,850	17,550				
Scranton, Pa.:							
Detached and semidetached	9,200	11,100	13,650	16,300	19,600	21,850	22,800
Row dwellings	8,750	10,550	13,000	15,500	18,700	20,800	21,700
Walk-up	7,500	9,350	11,800	14,000	16,200	17,800	18,750
Elevator-structure	13,000	15,150	14,150				

PROTOTYPE PER UNIT COST SCHEDULE

REGION III—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Bethlehem, Pa.:							
Detached and semidetached	9,700	11,700	14,400	17,200	20,700	23,050	24,100
Row dwellings	9,250	11,150	13,750	16,400	19,750	21,950	22,900
Walk-up	7,900	9,850	12,450	14,750	17,100	18,800	19,800
Elevator-structure	13,150	16,250	19,350				
Pittsburgh, Pa.:							
Detached and semidetached	9,000	11,050	14,700	17,550	21,100	23,550	24,550
Row dwellings	9,400	11,400	14,000	16,700	20,100	22,400	23,400
Walk-up	8,050	10,050	12,700	15,050	17,450	19,200	20,150
Elevator-structure	12,850	14,900	18,000				
Altoona, Pa.:							
Detached and semidetached	9,500	11,450	14,100	16,800	20,200	22,550	23,550
Row dwellings	9,000	10,950	13,400	16,000	19,250	21,450	22,450
Walk-up	7,700	9,650	12,150	14,450	16,750	18,400	19,300
Elevator-structure	11,050	13,850	17,550				
Erie, Pa.:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,150	22,500	23,450
Row dwellings	9,000	10,900	13,350	15,950	19,200	21,400	22,350
Walk-up	7,700	9,600	12,150	14,350	16,650	18,350	19,250
Elevator-structure	12,650	14,650	18,550				
Johnstown, Pa.:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,150	22,500	23,450
Row dwellings	9,000	10,900	13,350	15,950	19,200	21,400	22,350
Walk-up	7,700	9,600	12,150	14,350	16,650	18,350	19,250
Elevator-structure	12,100	14,050	17,800				
New Castle, Pa.:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,150	22,500	23,450
Row dwellings	9,000	10,900	13,350	15,950	19,200	21,400	22,350
Walk-up	7,700	9,600	12,150	14,350	16,650	18,350	19,250
Elevator-structure	12,100	14,050	17,800				
Sharon, Pa.:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,150	22,500	23,450
Row dwellings	9,000	10,900	13,350	15,950	19,200	21,400	22,350
Walk-up	7,700	9,600	12,150	14,350	16,650	18,350	19,250
Elevator-structure	12,100	14,050	17,800				
Richmond, Va.:							
Detached and semidetached	7,050	9,000	11,800	14,100	16,950	18,900	19,700
Row dwellings	7,650	9,150	11,250	13,450	16,200	18,000	18,800
Walk-up	6,600	8,050	10,250	12,100	14,000	15,450	16,200
Elevator-structure	10,200	11,850	15,000				
Norfolk, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,300	11,950	15,150				
Virginia Beach, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,300	11,950	15,150				
Portsmouth, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,300	11,950	15,150				
Chesapeake, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,300	11,950	15,150				
Suffolk, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,300	11,950	15,150				
Roanoke, Va.:							
Detached and semidetached	8,100	9,900	12,050	14,350	17,200	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,250	11,900	15,050				

PROTOTYPE PER UNIT COST SCHEDULE

REGION III—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Lynchburg, Va.:							
Detached and semidetached	8,100	9,800	12,050	14,350	17,300	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,250	11,900	15,050				
Danville, Va.:							
Detached and semidetached	8,100	9,850	12,050	14,350	17,300	19,250	20,150
Row dwellings	7,700	9,350	11,450	13,700	16,500	18,350	19,150
Walk-up	6,600	8,200	10,450	12,350	14,250	15,750	16,500
Elevator-structure	10,250	11,900	15,050				
Newport News, Va.:							
Detached and semidetached	8,150	9,850	12,100	14,450	17,400	19,400	20,250
Row dwellings	7,750	9,400	11,550	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,350	15,850	16,600
Elevator-structure	10,400	12,050	15,300				
Hampton, Va.:							
Detached and semidetached	8,150	9,850	12,100	14,450	17,400	19,400	20,250
Row dwellings	7,750	9,400	11,550	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,350	15,850	16,600
Elevator-structure	10,400	12,050	15,300				
Fredericksburg, Va.:							
Detached and semidetached	8,250	9,950	12,200	14,600	17,550	19,550	20,450
Row dwellings	7,800	9,450	11,650	13,900	16,750	18,650	19,450
Walk-up	6,750	8,350	10,600	12,500	14,500	16,000	16,750
Elevator-structure	11,200	13,000	16,500				
Warrenton, Va.:							
Detached and semidetached	8,250	9,950	12,200	14,600	17,550	19,550	20,450
Row dwellings	7,800	9,450	11,650	13,900	16,750	18,650	19,450
Walk-up	6,750	8,350	10,600	12,500	14,500	16,000	16,750
Elevator-structure	11,200	13,000	16,500				
Harrisonburg, Va.:							
Detached and semidetached	8,150	9,850	12,100	14,450	17,400	19,400	20,250
Row dwellings	7,750	9,400	11,550	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,350	15,850	16,600
Elevator-structure	10,400	12,050	15,300				
Bristol, Va.:							
Detached and semidetached	8,450	10,200	12,550	14,950	17,950	20,050	20,950
Row dwellings	8,000	9,700	11,950	14,250	17,200	19,150	19,950
Walk-up	6,900	8,550	10,850	12,850	14,850	16,450	17,250
Elevator-structure	11,000	12,750	16,150				
Eastern Shore, Va.:							
Detached and semidetached	8,150	9,850	12,100	14,450	17,400	19,400	20,250
Row dwellings	7,750	9,400	11,550	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,350	15,850	16,600
Elevator-structure	10,400	12,050	15,300				
Charleston, W. Va.:							
Detached and semidetached	8,750	10,600	13,050	15,550	18,750	20,900	21,850
Row dwellings	8,350	10,100	12,450	14,850	17,850	19,900	20,750
Walk-up	7,150	8,850	11,050	13,250	16,450	17,950	17,950
Elevator-structure	12,500	14,500	18,100				
Beckley, W. Va.:							
Detached and semidetached	8,550	10,350	12,750	15,150	18,300	20,400	21,250
Row dwellings	8,150	9,850	12,150	14,500	17,400	19,400	20,250
Walk-up	6,950	8,700	11,000	13,000	16,050	16,050	17,450
Elevator-structure	12,000	13,950	17,650				
Bluefield, W. Va.:							
Detached and semidetached	8,550	10,350	12,750	15,150	18,300	20,400	21,250
Row dwellings	8,150	9,850	12,150	14,500	17,400	19,400	20,250
Walk-up	6,950	8,700	11,000	13,000	16,050	16,050	17,450
Elevator-structure	12,000	13,950	17,650				
Huntington, W. Va.:							
Detached and semidetached	8,600	10,450	12,850	15,300	18,450	20,550	21,450
Row dwellings	8,200	9,950	12,250	14,600	17,550	19,550	20,400
Walk-up	7,050	8,750	11,100	13,150	16,200	16,750	17,600
Elevator-structure	12,100	14,050	17,800				
Parkersburg, W. Va.:							
Detached and semidetached	8,600	10,450	12,850	15,300	18,450	20,550	21,450
Row dwellings	8,200	9,950	12,250	14,600	17,550	19,550	20,400
Walk-up	7,050	8,750	11,100	13,150	16,200	16,750	17,600
Elevator-structure	12,100	14,050	17,800				

PROTOTYPE PER UNIT COST SCHEDULE

REGION III—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Wheeling, W. Va.:							
Detached and semidetached	8,550	10,350	12,750	15,150	18,300	20,400	21,250
Row dwellings	8,150	9,850	12,150	14,500	17,400	19,400	20,250
Walk-up	6,950	8,700	11,000	13,000	15,050	16,650	17,450
Elevator-structure	12,000	13,950	17,650				
Martinsburg, W. Va.:							
Detached and semidetached	9,100	9,650	11,850	14,150	17,050	19,000	19,850
Row dwellings	7,600	9,200	11,350	13,500	16,250	18,100	18,900
Walk-up	6,500	8,100	10,300	12,150	14,050	15,500	16,300
Elevator-structure	12,000	13,950	17,650				
Fairmont, W. Va.:							
Detached and semidetached	8,400	10,200	12,550	14,950	18,050	20,100	21,000
Row dwellings	8,050	9,700	12,000	14,300	17,200	19,150	19,950
Walk-up	6,900	8,550	10,900	12,850	14,850	16,400	17,250
Elevator-structure	11,950	13,900	17,600				
Point Pleasant, W. Va.:							
Detached and semidetached	8,200	9,950	12,250	14,600	17,600	19,650	20,500
Row dwellings	7,850	9,500	11,700	13,950	16,800	18,700	19,500
Walk-up	6,700	8,350	10,600	12,550	14,500	16,000	16,800
Elevator-structure	12,050	14,000	17,750				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IV

	Number of bedrooms						
	0	1	2	3	4	5	6
Birmingham, Ala.:							
Detached and semidetached	7,550	9,100	11,250	13,450	16,200	18,000	18,850
Row dwellings	7,250	8,700	10,750	12,800	15,400	17,150	17,950
Walk-up	6,200	7,650	9,750	11,600	13,350	14,700	15,450
Elevator-structure	10,350	12,050	15,200				
Dothan, Ala.:							
Detached and semidetached	7,200	8,700	10,750	12,850	15,450	17,200	18,000
Row dwellings	6,900	8,300	10,250	12,200	14,700	16,400	17,150
Walk-up	5,900	7,300	9,200	11,000	12,750	14,050	14,750
Elevator-structure	10,050	11,700	14,750				
Florence, Ala.:							
Detached and semidetached	7,250	8,750	10,800	12,950	15,600	17,300	18,150
Row dwellings	7,000	8,350	10,350	12,300	14,800	16,500	17,250
Walk-up	5,950	7,350	9,400	11,050	12,850	14,150	14,850
Elevator-structure	10,250	11,950	15,050				
Huntsville, Ala.:							
Detached and semidetached	7,150	8,600	10,650	12,700	15,300	17,000	17,800
Row dwellings	6,850	8,200	10,150	12,100	14,550	16,200	16,950
Walk-up	5,850	7,250	9,200	10,850	12,600	13,900	14,600
Elevator-structure	10,050	11,700	14,800				
Mobile, Ala.:							
Detached and semidetached	8,250	9,950	12,300	14,700	17,700	19,700	20,600
Row dwellings	7,950	9,600	11,750	14,000	16,850	18,750	19,650
Walk-up	6,800	8,350	10,650	12,600	14,600	16,050	16,900
Elevator-structure	11,200	13,150	16,800				
Montgomery, Ala.:							
Detached and semidetached	7,200	8,700	10,700	12,800	15,450	17,150	17,950
Row dwellings	6,900	8,300	10,250	12,200	14,700	16,350	17,100
Walk-up	5,900	7,300	9,200	10,950	12,700	14,000	14,700
Elevator-structure	10,150	11,850	14,950				
Sheffield, Ala.:							
Detached and semidetached	7,250	8,750	10,850	12,950	15,600	17,300	18,150
Row dwellings	7,000	8,350	10,350	12,300	14,800	16,500	17,250
Walk-up	5,950	7,350	9,400	11,050	12,850	14,150	14,850
Elevator-structure	10,250	11,950	15,050				
Tuscaloosa, Ala.:							
Detached and semidetached	7,150	8,600	10,650	12,700	15,300	17,000	17,800
Row dwellings	6,850	8,200	10,150	12,100	14,550	16,200	16,950
Walk-up	5,850	7,250	9,200	10,850	12,600	13,900	14,600
Elevator-structure	10,050	11,700	14,750				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IV—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Jacksonville, Fla.:							
Detached and semidetached	7,500	9,050	11,150	13,350	16,050	17,800	18,650
Row dwellings	7,150	8,650	10,650	12,700	15,250	17,000	17,750
Walk-up	6,100	7,600	9,700	11,400	13,250	14,550	15,300
Elevator-structure	10,500	12,200	15,450				
Fort Walton Beach, Fla.:							
Detached and semidetached	7,450	9,000	11,050	13,250	15,900	17,650	18,500
Row dwellings	7,100	8,600	10,550	12,600	15,150	16,850	17,600
Walk-up	6,050	7,550	9,600	11,300	13,150	14,450	15,200
Elevator-structure	10,400	12,100	15,300				
Gainesville, Fla.:							
Detached and semidetached	7,800	9,400	11,600	13,900	16,700	18,500	19,400
Row dwellings	7,450	9,000	11,100	13,200	15,850	17,700	18,450
Walk-up	6,350	7,900	10,100	11,850	13,800	15,150	15,900
Elevator-structure	10,950	12,700	16,100				
Panama City, Fla.:							
Detached and semidetached	7,450	9,000	11,050	13,250	15,900	17,650	18,500
Row dwellings	7,100	8,600	10,550	12,600	15,150	16,850	17,600
Walk-up	6,050	7,550	9,600	11,300	13,150	14,450	15,200
Elevator-structure	10,400	12,100	15,300				
Pensacola, Fla.:							
Detached and semidetached	7,450	9,000	11,050	13,250	15,900	17,650	18,500
Row dwellings	7,100	8,600	10,550	12,600	15,150	16,850	17,600
Walk-up	6,050	7,550	9,600	11,300	13,150	14,450	15,200
Elevator-structure	10,400	12,100	15,300				
Tallahassee, Fla.:							
Detached and semidetached	7,700	9,250	11,400	13,700	16,450	18,250	19,100
Row dwellings	7,300	8,850	10,900	13,000	15,600	17,400	18,200
Walk-up	6,250	7,800	9,950	11,700	13,550	14,900	15,650
Elevator-structure	10,750	12,500	15,850				
Miami, Fla. (Coral Gables):							
Detached and semidetached	8,850	10,650	13,100	15,700	18,900	21,000	22,000
Row dwellings	8,400	10,150	12,600	14,950	18,000	20,000	21,000
Walk-up	7,100	8,950	11,400	13,450	15,600	17,150	18,050
Elevator-structure	12,400	14,450	18,250				
Fort Lauderdale, Fla.:							
Detached and semidetached	7,850	9,450	11,600	13,900	16,750	18,600	19,500
Row dwellings	7,450	9,000	11,150	13,250	15,950	17,700	18,600
Walk-up	6,300	7,950	10,100	11,900	13,800	15,200	16,000
Elevator-structure	11,850	13,800	17,400				
Fort Myers, Fla.:							
Detached and semidetached	7,350	8,800	10,850	13,000	15,650	17,400	18,250
Row dwellings	6,950	8,400	10,450	12,400	14,900	16,550	17,400
Walk-up	5,900	7,400	9,450	11,150	12,950	14,200	14,950
Elevator-structure	11,050	12,900	16,300				
Key West, Fla.:							
Detached and semidetached	8,850	10,650	13,100	15,700	18,900	21,000	22,000
Row dwellings	8,400	10,150	12,600	14,950	18,000	20,000	21,000
Walk-up	7,100	8,950	11,400	13,450	15,600	17,150	18,050
Elevator-structure	12,400	14,450	18,250				
West Palm Beach, Fla.:							
Detached and semidetached	8,200	9,850	12,150	14,550	17,500	19,450	20,350
Row dwellings	7,800	9,400	11,650	13,850	16,650	18,500	19,450
Walk-up	6,650	8,300	10,550	12,450	14,450	15,900	16,700
Elevator-structure	12,100	14,100	17,800				
Tampa, Fla.:							
Detached and semidetached	7,650	9,200	11,400	13,600	16,350	18,200	19,050
Row dwellings	7,300	8,800	10,900	12,950	15,650	17,350	18,150
Walk-up	6,250	7,700	9,850	11,650	13,600	14,850	15,600
Elevator-structure	10,650	12,400	15,650				
Cocoa, Fla.:							
Detached and semidetached	7,600	9,100	11,300	13,500	16,200	18,000	18,900
Row dwellings	7,250	8,700	10,800	12,850	15,500	17,200	18,000
Walk-up	6,200	7,700	9,750	11,650	13,450	14,700	15,450
Elevator-structure	10,650	12,350	15,600				
Daytona Beach, Fla.:							
Detached and semidetached	8,650	10,750	13,250	15,900	19,150	21,250	22,250
Row dwellings	8,250	10,250	12,750	15,150	18,150	20,250	21,250
Walk-up	7,350	9,050	11,500	13,600	15,750	17,350	18,250
Elevator-structure	12,450	14,500	18,350				

	Number of bedrooms						
	0	1	2	3	4	5	6
Fort Pierce, Fla.:							
Detached and semidetached	8,100	9,750	12,050	14,400	17,300	19,250	20,150
Row dwellings	7,750	9,300	11,550	13,700	16,450	18,350	19,200
Walk-up	6,600	8,200	10,450	12,350	14,300	15,700	16,500
Elevator-structure	11,300	13,150	16,550				
Lakeland, Fla.:							
Detached and semidetached	7,700	9,300	11,500	13,700	16,500	18,350	19,200
Row dwellings	7,350	8,850	11,000	13,050	15,700	17,500	18,300
Walk-up	6,300	7,800	9,950	11,750	13,600	14,950	15,750
Elevator-structure	10,750	12,500	15,800				
Orlando, Fla.:							
Detached and semidetached	7,450	9,000	11,150	13,300	15,950	17,750	18,600
Row dwellings	7,150	8,600	10,650	12,650	15,200	16,950	17,750
Walk-up	6,100	7,550	9,600	11,400	13,200	14,500	15,250
Elevator-structure	10,400	12,100	15,300				
Sarasota, Fla.:							
Detached and semidetached	7,850	9,450	11,700	13,950	16,750	18,650	19,550
Row dwellings	7,500	9,000	11,150	13,300	15,950	17,800	18,600
Walk-up	6,400	7,950	10,100	11,950	13,850	15,200	16,000
Elevator-structure	10,000	12,700	16,050				
St. Petersburg, Fla.:							
Detached and semidetached	7,600	9,000	11,150	13,300	16,000	17,800	18,650
Row dwellings	7,150	8,600	10,650	12,700	15,200	17,000	17,750
Walk-up	6,100	7,600	9,650	11,400	13,200	14,550	15,250
Elevator-structure	10,450	12,150	15,200				
Atlanta, Ga.:							
Detached and semidetached	7,600	9,150	11,300	13,500	16,250	18,050	18,900
Row dwellings	7,250	8,750	10,800	12,850	15,450	17,200	18,000
Walk-up	6,200	7,700	9,800	11,650	13,400	14,750	15,500
Elevator-structure	10,750	12,500	15,800				
Albany, Ga.:							
Detached and semidetached	7,650	9,250	11,200	13,400	16,100	17,900	18,750
Row dwellings	7,300	8,850	10,700	12,750	15,300	17,050	17,850
Walk-up	6,150	7,650	9,700	11,450	13,200	14,600	15,350
Elevator-structure	10,650	12,400	15,650				
Augusta, Ga.:							
Detached and semidetached	7,450	9,000	11,100	13,250	15,950	17,750	18,550
Row dwellings	7,100	8,600	10,600	12,650	15,200	16,900	17,700
Walk-up	6,100	7,550	9,650	11,350	13,150	14,500	15,250
Elevator-structure	10,650	12,300	15,650				
Brunswick, Ga.:							
Detached and semidetached	7,650	9,250	11,200	13,400	16,100	17,900	18,750
Row dwellings	7,300	8,850	10,700	12,750	15,300	17,050	17,850
Walk-up	6,150	7,650	9,700	11,450	13,200	14,600	15,350
Elevator-structure	10,650	12,400	15,650				
Columbus, Ga.:							
Detached and semidetached	7,450	9,000	11,100	13,250	15,950	17,750	18,550
Row dwellings	7,100	8,600	10,600	12,650	15,200	16,900	17,700
Walk-up	6,100	7,550	9,650	11,350	13,150	14,500	15,250
Elevator-structure	10,650	12,300	15,650				
Macon, Ga.:							
Detached and semidetached	7,450	9,000	11,100	13,250	15,950	17,750	18,550
Row dwellings	7,100	8,600	10,600	12,650	15,200	16,900	17,700
Walk-up	6,100	7,550	9,650	11,350	13,150	14,500	15,250
Elevator-structure	10,650	12,300	15,650				
Rome, Ga.:							
Detached and semidetached	7,400	8,950	11,050	13,150	15,850	17,600	18,400
Row dwellings	7,050	8,600	10,600	12,600	15,050	16,750	17,550
Walk-up	6,050	7,500	9,550	11,250	13,050	14,350	15,100
Elevator-structure	10,450	12,150	15,450				
Savannah, Ga.:							
Detached and semidetached	7,650	9,250	11,200	13,400	16,100	17,900	18,750
Row dwellings	7,300	8,850	10,700	12,750	15,300	17,050	17,850
Walk-up	6,150	7,650	9,700	11,450	13,200	14,600	15,350
Elevator-structure	10,650	12,400	15,650				
Valdosta, Ga.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,450
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,500	9,600	11,300	13,100	14,400	15,150
Elevator-structure	10,650	12,400	15,650				

	Number of bedrooms						
	0	1	2	3	4	5	6
Louisville, Ky.:							
Detached and semidetached	8,150	9,800	12,100	14,500	17,450	19,350	20,300
Row dwellings	7,800	9,400	11,600	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,400	15,850	16,650
Elevator-structure	12,200	14,200	17,950				
Ashland, Ky.:							
Detached and semidetached	8,400	10,150	12,500	15,000	18,050	20,000	21,000
Row dwellings	8,050	9,700	12,000	14,250	17,150	19,050	19,950
Walk-up	6,850	8,550	10,850	12,800	14,900	16,400	17,200
Elevator-structure	12,600	14,700	18,550				
Bowling Green, Ky.:							
Detached and semidetached	7,900	9,450	11,700	14,000	16,850	18,700	19,600
Row dwellings	7,550	9,100	11,200	13,350	16,050	17,850	18,650
Walk-up	6,450	7,950	10,150	12,000	13,900	15,300	16,100
Elevator-structure	11,800	13,700	17,350				
Corbin, Ky.:							
Detached and semidetached	8,150	9,800	12,100	14,500	17,450	19,350	20,300
Row dwellings	7,800	9,400	11,600	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,400	15,850	16,650
Elevator-structure	12,200	14,200	17,950				
Covington, Ky.:							
Detached and semidetached	8,750	10,600	12,950	15,550	18,700	20,750	21,750
Row dwellings	8,350	10,050	12,450	14,800	17,800	19,750	20,700
Walk-up	7,150	8,850	11,250	13,300	15,450	17,000	17,850
Elevator-structure	12,850	15,000	18,950				
Frankfort, Ky.:							
Detached and semidetached	7,900	9,150	11,300	13,550	16,300	18,100	19,000
Row dwellings	7,300	8,800	10,850	12,900	15,550	17,250	18,050
Walk-up	6,200	7,700	9,800	11,600	13,450	14,850	15,600
Elevator-structure	11,250	13,100	16,550				
Hopkinsville, Ky.:							
Detached and semidetached	7,750	9,300	11,500	13,750	16,550	18,350	19,300
Row dwellings	7,400	8,950	11,000	13,100	15,750	17,500	18,350
Walk-up	6,300	7,850	9,950	11,800	13,650	15,050	15,800
Elevator-structure	11,600	13,500	17,050				
Lexington, Ky.:							
Detached and semidetached	8,150	9,800	12,100	14,500	17,450	19,350	20,300
Row dwellings	7,800	9,400	11,600	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,400	15,850	16,650
Elevator-structure	12,200	14,200	17,950				
Middlesboro, Ky.:							
Detached and semidetached	8,150	9,800	12,100	14,500	17,450	19,350	20,300
Row dwellings	7,800	9,400	11,600	13,800	16,600	18,450	19,300
Walk-up	6,650	8,250	10,500	12,400	14,400	15,850	16,650
Elevator-structure	12,200	14,200	17,950				
Murray, Ky.:							
Detached and semidetached	7,750	9,350	11,600	13,750	16,550	18,350	19,300
Row dwellings	7,400	8,950	11,000	13,100	15,750	17,500	18,350
Walk-up	6,300	7,850	9,950	11,800	13,650	15,050	15,800
Elevator-structure	11,600	13,500	17,050				
Newport, Ky.:							
Detached and semidetached	8,300	10,000	12,350	14,800	17,800	19,750	20,700
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,800	19,750
Walk-up	6,800	8,400	10,700	12,650	14,700	16,150	17,000
Elevator-structure	12,300	14,350	18,150				
Owensboro, Ky.:							
Detached and semidetached	8,300	10,000	12,350	14,800	17,800	19,750	20,700
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,800	19,750
Walk-up	6,800	8,400	10,700	12,650	14,700	16,150	17,000
Elevator-structure	12,300	14,350	18,150				
Paducah, Ky.:							
Detached and semidetached	7,900	9,450	11,700	13,950	16,750	18,600	19,550
Row dwellings	7,500	8,900	10,950	12,900	15,550	17,250	18,050
Walk-up	6,300	7,700	9,850	11,600	13,500	14,850	15,600
Elevator-structure	11,600	13,500	17,050				
Jackson, Miss.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,450
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,500	9,600	11,300	13,100	14,400	15,150
Elevator-structure	10,650	12,400	15,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IV—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Biloxi, Miss.:							
Detached and semidetached	7,500	9,050	11,150	13,350	16,050	17,800	18,700
Row dwellings	7,150	8,650	10,650	12,650	15,250	16,950	17,750
Walk-up	6,100	7,600	9,700	11,400	13,200	14,600	15,300
Elevator-structure	10,900	12,700	16,050				
Greenville, Miss.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,500
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,550	9,600	11,300	13,100	14,450	15,150
Elevator-structure	10,550	12,300	15,500				
Greenwood, Miss.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,500
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,550	9,600	11,300	13,100	14,450	15,150
Elevator-structure	10,600	12,350	15,600				
Gulfport, Miss.:							
Detached and semidetached	7,500	9,000	11,100	13,250	16,000	17,750	18,600
Row dwellings	7,150	8,600	10,600	12,600	15,150	16,900	17,700
Walk-up	6,100	7,600	9,650	11,350	13,150	14,500	15,200
Elevator-structure	10,700	12,500	15,750				
Hattiesburg, Miss.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,500
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,550	9,600	11,300	13,100	14,450	15,150
Elevator-structure	10,550	12,350	15,600				
Southaven, Miss.:							
Detached and semidetached	7,300	8,800	10,850	12,950	15,650	17,350	18,200
Row dwellings	7,000	8,400	10,350	12,350	14,850	16,500	17,300
Walk-up	5,950	7,400	9,450	11,100	12,900	14,200	14,900
Elevator-structure	10,400	12,150	15,350				
Tupelo, Miss.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,500
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,550	9,600	11,300	13,100	14,450	15,150
Elevator-structure	10,600	12,350	15,600				
Greensboro, N.C.:							0
Detached and semidetached	7,350	8,850	10,950	13,100	15,750	17,500	18,300
Row dwellings	7,050	8,500	10,450	12,450	15,000	16,700	17,450
Walk-up	6,000	7,450	9,500	11,200	13,000	14,300	15,05
Elevator-structure	10,750	12,500	15,800				
Asheville, N.C.:							
Detached and semidetached	7,550	9,100	11,250	13,450	16,150	17,950	18,800
Row dwellings	7,250	8,700	10,700	12,750	15,400	17,150	17,900
Walk-up	6,150	7,650	9,750	11,500	13,350	14,650	15,450
Elevator-structure	11,050	12,850	16,200				
Charlotte, N.C.:							
Detached and semidetached	7,350	8,850	10,950	13,100	15,750	17,500	18,300
Row dwellings	7,050	8,500	10,450	12,450	15,000	16,700	17,450
Walk-up	6,000	7,450	9,500	11,200	13,000	14,300	15,050
Elevator-structure	10,750	12,500	15,800				
Durham, N.C.:							
Detached and semidetached	7,300	8,800	10,900	13,050	15,700	17,400	18,200
Row dwellings	7,000	8,450	10,400	12,400	14,950	16,600	17,350
Walk-up	5,950	7,400	9,450	11,150	12,950	14,250	15,000
Elevator-structure	10,700	12,450	15,700				
Greenville, N.C.:							
Detached and semidetached	7,100	8,550	10,550	12,650	15,200	16,900	17,650
Row dwellings	6,800	8,200	10,100	12,000	14,500	16,100	16,850
Walk-up	5,800	7,200	9,150	10,800	12,550	13,800	14,550
Elevator-structure	10,400	12,050	15,250				
Raleigh, N.C.:							
Detached and semidetached	7,500	8,750	10,850	12,950	15,600	17,350	18,100
Row dwellings	7,000	8,400	10,300	12,350	14,850	16,550	17,300
Walk-up	5,950	7,400	9,400	11,100	12,850	14,150	14,900
Elevator-structure	10,700	12,450	15,700				
Wilmington, N.C.:							
Detached and semidetached	7,250	8,750	10,800	12,900	15,550	17,250	18,050
Row dwellings	6,950	8,400	10,300	12,300	14,800	16,450	17,200
Walk-up	5,900	7,350	9,350	11,050	12,800	14,100	14,850
Elevator-structure	10,650	12,350	15,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IV—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Winston-Salem, N.C.:							
Detached and semidetached	7,350	8,850	10,950	13,100	15,750	17,500	18,300
Row dwellings	7,050	8,500	10,450	12,450	15,000	16,700	17,450
Walk-up	6,000	7,450	9,500	11,200	13,000	14,300	15,050
Elevator-structure	10,700	12,450	15,750				
Columbia, S.C.:							
Detached and semidetached	7,000	8,450	10,400	12,450	15,000	16,650	17,450
Row dwellings	6,700	8,050	9,950	11,850	14,250	15,850	16,600
Walk-up	5,700	7,100	9,050	10,650	12,350	13,600	14,300
Elevator-structure	9,600	11,150	14,100				
Aiken, S.C.:							
Detached and semidetached	7,100	8,600	10,600	12,650	15,250	16,950	17,750
Row dwellings	6,800	8,200	10,100	12,050	14,500	16,100	16,900
Walk-up	5,800	7,200	9,200	10,850	12,550	13,850	14,550
Elevator-structure	9,750	11,350	14,350				
Anderson, S.C.:							
Detached and semidetached	7,050	8,500	10,500	12,550	15,150	16,800	17,600
Row dwellings	6,750	8,100	10,050	11,950	14,350	16,000	16,750
Walk-up	5,750	7,150	9,150	10,750	12,450	13,700	14,400
Elevator-structure	9,700	11,250	14,200				
Beaufort, S.C.:							
Detached and semidetached	7,200	8,650	10,650	12,750	15,400	17,100	17,900
Row dwellings	6,850	8,250	10,200	12,150	14,600	16,250	17,000
Walk-up	5,850	7,300	9,300	10,900	12,650	13,950	14,650
Elevator-structure	9,850	11,450	14,450				
Charleston, S.C.:							
Detached and semidetached	7,450	9,000	11,100	13,250	16,000	17,750	18,600
Row dwellings	7,150	8,600	10,600	12,650	15,200	16,900	17,700
Walk-up	6,100	7,550	9,650	11,350	13,150	14,500	15,250
Elevator-structure	10,050	11,700	14,800				
Florence, S.C.:							
Detached and semidetached	7,100	8,600	10,600	12,650	15,250	16,950	17,750
Row dwellings	6,800	8,200	10,100	12,050	14,500	16,100	16,900
Walk-up	5,800	7,200	9,200	10,850	12,550	13,850	14,550
Elevator-structure	9,750	11,350	14,350				
Greenville, S.C.:							
Detached and semidetached	7,200	8,700	10,700	12,800	15,450	17,150	17,950
Row dwellings	6,900	8,300	10,250	12,200	14,700	16,350	17,100
Walk-up	5,850	7,300	9,300	10,950	12,700	14,000	14,750
Elevator-structure	9,850	11,450	14,450				
Greenwood, S.C.:							
Detached and semidetached	7,050	8,500	10,500	12,550	15,150	16,800	17,600
Row dwellings	6,750	8,100	10,050	11,950	14,350	16,000	16,750
Walk-up	5,750	7,150	9,150	10,750	12,450	13,700	14,400
Elevator-structure	9,700	11,250	14,200				
Myrtle Beach, S.C.:							
Detached and semidetached	7,200	8,650	10,650	12,750	15,400	17,100	17,900
Row dwellings	6,850	8,100	10,200	12,150	14,600	16,250	17,000
Walk-up	5,850	7,150	9,300	10,900	12,650	13,950	14,650
Elevator-structure	9,850	11,450	14,450				
North Augusta, S.C.:							
Detached and semidetached	7,450	8,950	11,050	13,200	15,900	17,650	18,500
Row dwellings	7,100	8,550	10,550	12,550	15,100	16,800	17,600
Walk-up	6,050	7,550	9,600	11,300	13,100	14,450	15,150
Elevator-structure	10,200	11,850	14,950				
Orangeburg, S.C.:							
Detached and semidetached	7,000	8,450	10,400	12,450	15,000	16,650	17,450
Row dwellings	6,700	8,050	9,950	11,850	14,250	15,850	16,600
Walk-up	5,700	7,100	9,050	10,650	12,350	13,600	14,300
Elevator-structure	9,600	11,150	14,100				
Rockhill, S.C.:							
Detached and semidetached	7,150	8,600	10,600	12,650	15,250	16,950	17,700
Row dwellings	6,800	8,200	10,100	12,050	14,500	16,100	16,900
Walk-up	5,800	7,200	9,200	10,850	12,550	13,850	14,550
Elevator-structure	9,700	11,250	14,250				
Spartanburg, S.C.:							
Detached and semidetached	7,200	8,700	10,700	12,800	15,450	17,150	17,950
Row dwellings	6,900	8,300	10,250	12,200	14,700	16,350	17,100
Walk-up	5,850	7,300	9,300	10,950	12,700	14,000	14,750
Elevator-structure	9,850	11,450	14,450				

REGION IV—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Knoxville, Tenn.:							
Detached and semidetached	7,800	9,400	11,600	13,850	16,700	18,550	19,400
Row dwellings	7,450	9,000	11,100	13,200	15,850	17,650	18,500
Walk-up	6,350	7,900	10,050	11,850	13,750	15,150	15,900
Elevator-structure	10,450	12,150	15,350				
Chattanooga, Tenn.:							
Detached and semidetached	7,750	9,350	11,550	13,750	16,600	18,450	19,300
Row dwellings	7,400	8,950	11,050	13,150	15,750	17,550	18,400
Walk-up	6,300	7,850	10,000	11,800	13,650	15,050	15,800
Elevator-structure	10,400	12,100	15,250				
Johnson City, Tenn.:							
Detached and semidetached	7,800	9,400	11,600	13,850	16,700	18,550	19,400
Row dwellings	7,450	9,000	11,100	13,200	15,850	17,650	18,500
Walk-up	6,350	7,900	10,050	11,850	13,750	15,150	15,900
Elevator-structure	10,450	12,150	15,350				
Kingsport, Tenn.:							
Detached and semidetached	7,800	9,400	11,600	13,850	16,700	18,550	19,400
Row dwellings	7,450	9,000	11,100	13,200	15,850	17,650	18,500
Walk-up	6,350	7,900	10,050	11,850	13,750	15,150	15,900
Elevator-structure	10,450	12,150	15,350				
Nashville, Tenn.:							
Detached and semidetached	7,650	9,250	11,400	13,600	16,400	18,250	19,050
Row dwellings	7,300	8,850	10,900	13,000	15,600	17,350	18,200
Walk-up	6,250	7,750	9,900	11,650	13,500	14,900	15,650
Elevator-structure	10,100	11,750	14,850				
Oak Ridge, Tenn.:							
Detached and semidetached	7,800	9,400	11,600	13,850	16,700	18,550	19,400
Row dwellings	7,450	9,000	11,100	13,200	15,850	17,650	18,500
Walk-up	6,350	7,900	10,050	11,850	13,700	15,100	15,900
Elevator-structure	10,450	12,150	15,350				
Memphis, Tenn.:							
Detached and semidetached	7,350	8,850	10,950	13,050	15,750	17,500	18,300
Row dwellings	7,000	8,450	10,450	12,450	14,950	16,650	17,450
Walk-up	6,000	7,450	9,500	11,200	13,000	14,300	15,000
Elevator-structure	10,450	12,150	15,350				
Clarksville, Tenn.:							
Detached and semidetached	7,450	8,950	11,050	13,150	15,850	17,650	18,450
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,600
Walk-up	6,050	7,500	9,600	10,700	13,100	14,400	15,100
Elevator-structure	10,550	12,250	15,450				
Columbia, Tenn.:							
Detached and semidetached	7,700	9,250	11,450	13,650	16,500	18,350	19,150
Row dwellings	7,350	8,850	10,950	13,050	15,650	17,450	18,300
Walk-up	6,300	7,800	9,950	11,700	13,600	15,000	15,700
Elevator-structure	10,950	12,700	15,100				
Jackson, Tenn.:							
Detached and semidetached	7,650	9,250	11,350	14,100	17,000	18,900	19,750
Row dwellings	7,250	9,100	11,050	13,450	16,150	17,950	18,850
Walk-up	6,200	8,050	10,250	12,100	14,050	15,450	16,200
Elevator-structure	11,000	13,100	16,250				
Union City, Tenn.:							
Detached and semidetached	8,000	9,650	11,950	14,200	17,150	19,050	19,950
Row dwellings	7,650	9,200	11,400	13,550	16,300	18,150	19,000
Walk-up	6,550	8,100	10,350	12,200	14,150	15,600	16,350
Elevator-structure	11,400	13,250	16,750				
Corinth, Miss.:							
Detached and semidetached	7,400	8,900	11,050	13,150	15,850	17,650	18,450
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,600
Walk-up	6,050	7,500	9,600	10,700	13,100	14,400	15,100
Elevator-structure	10,550	12,250	15,450				

REGION V

	Number of bedrooms						
	0	1	2	3	4	5	6
Chicago, Ill.:							
Detached and semidetached	9,050	10,950	13,900	16,100	19,350	21,550	22,550
Row dwellings	8,650	10,400	12,850	15,300	18,400	20,500	21,450
Walk-up	7,400	9,200	11,650	13,800	15,950	17,600	18,450
Elevator-structure	12,950	15,050	19,050				
Moline, Ill.:							
Detached and semidetached	8,550	10,350	12,750	15,200	18,250	20,350	21,300
Row dwellings	8,150	9,800	12,150	14,450	17,350	19,350	20,250
Walk-up	7,000	8,700	11,000	13,250	15,050	16,600	17,400
Elevator-structure	12,150	14,150	17,900				
Rockford, Ill.:							
Detached and semidetached	8,350	10,100	12,400	14,850	17,850	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,250	17,000
Elevator-structure	11,900	13,800	17,450				
Rock Island, Ill.:							
Detached and semidetached	8,550	10,350	12,750	15,200	18,300	20,350	21,300
Row dwellings	8,200	9,850	12,150	14,450	17,400	19,400	20,300
Walk-up	7,000	8,700	11,000	13,050	15,100	16,650	17,450
Elevator-structure	12,150	14,150	17,900				
Sterling, Ill.:							
Detached and semidetached	8,500	10,250	12,650	15,100	18,150	20,200	21,150
Row dwellings	8,100	9,750	12,050	14,350	17,250	19,250	20,100
Walk-up	6,950	8,650	10,950	12,950	14,950	16,500	17,300
Elevator-structure	12,100	14,050	17,750				
Springfield, Ill.:							
Detached and semidetached	8,400	10,150	12,550	14,950	17,950	20,000	20,950
Row dwellings	8,050	9,650	11,950	14,200	17,100	19,050	19,900
Walk-up	6,850	8,550	10,800	12,800	14,800	16,350	17,150
Elevator-structure	11,750	13,650	17,250				
Belleville, Ill.:							
Detached and semidetached	8,750	10,550	13,050	15,550	18,700	20,850	21,900
Row dwellings	8,400	10,050	12,450	14,800	17,800	19,850	20,700
Walk-up	7,150	8,900	11,250	13,350	15,400	17,050	17,850
Elevator-structure	11,850	13,750	17,400				
Carbondale, Ill.:							
Detached and semidetached	8,400	10,150	12,550	14,950	18,000	20,050	21,000
Row dwellings	8,050	9,650	11,950	14,200	17,100	19,100	19,950
Walk-up	6,850	8,550	10,850	12,800	14,800	16,400	17,200
Elevator-structure	11,750	13,650	17,300				
Champaign, Ill.:							
Detached and semidetached	8,050	9,750	12,050	14,350	17,250	19,300	20,150
Row dwellings	7,700	9,250	11,500	13,650	16,450	18,350	19,100
Walk-up	6,650	8,200	10,450	12,300	14,250	15,700	16,500
Elevator-structure	11,250	13,100	16,650				
Danville, Ill.:							
Detached and semidetached	8,450	10,250	12,650	15,050	18,100	20,150	21,100
Row dwellings	8,100	9,700	12,000	14,300	17,250	19,250	20,050
Walk-up	6,950	8,600	10,900	12,900	14,900	16,500	17,300
Elevator-structure	11,850	13,750	17,400				
East St. Louis:							
Detached and semidetached	8,850	10,650	13,200	15,700	18,850	21,000	22,000
Row dwellings	8,450	10,150	12,550	14,900	17,950	20,000	20,950
Walk-up	7,200	9,000	11,300	13,450	15,550	17,200	18,000
Elevator-structure	12,900	14,850	18,600				
LaSalle, Ill.:							
Detached and semidetached	8,050	10,450	12,950	15,400	18,500	20,650	21,600
Row dwellings	8,300	9,950	12,300	14,650	17,650	19,650	20,550
Walk-up	7,050	8,800	11,150	13,200	15,250	16,850	17,700
Elevator-structure	12,100	14,100	17,800				

PROTOTYPE PER UNIT COST SCHEDULE

REGION V—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Peoria, Ill.:							
Detached and semidetached	8,550	10,300	12,750	15,200	18,250	20,350	21,300
Row dwellings	8,200	9,800	12,150	14,450	17,400	19,350	20,250
Walk-up	6,950	8,700	11,000	13,000	15,050	16,600	17,450
Elevator-structure	12,050	14,000	17,650				
Quincy, Ill.:							
Detached and semidetached	8,000	9,650	11,950	14,250	17,100	19,050	19,950
Row dwellings	7,650	9,200	11,400	13,500	16,300	18,150	18,950
Walk-up	6,500	8,150	10,300	12,200	14,100	15,550	16,350
Elevator-structure	11,200	13,000	16,450				
Indianapolis, Ind.:							
Detached and semidetached	8,350	10,100	12,450	14,850	17,800	19,850	20,750
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,000	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,000	13,950	17,700				
Bloomington, Ind.:							
Detached and semidetached	8,500	10,250	12,650	15,100	18,100	20,150	21,100
Row dwellings	8,050	9,750	12,050	14,300	17,200	19,200	20,050
Walk-up	6,900	8,650	10,900	12,900	14,950	16,450	17,250
Elevator-structure	12,200	14,150	18,000				
Evansville, Ind.:							
Detached and semidetached	8,750	10,600	13,050	15,550	18,650	20,800	21,750
Row dwellings	8,350	10,050	12,400	14,750	17,750	17,800	20,700
Walk-up	7,100	8,900	11,250	13,300	15,400	16,950	17,800
Elevator-structure	11,800	13,750	17,450				
Fort Wayne, Ind.:							
Detached and semidetached	8,600	10,400	12,850	15,300	18,350	20,500	21,400
Row dwellings	8,200	9,900	12,200	14,550	17,500	19,500	20,350
Walk-up	7,000	8,750	11,100	13,100	15,150	16,700	17,550
Elevator-structure	11,950	13,850	17,600				
Gary, Ind.:							
Detached and semidetached	9,050	10,950	13,550	16,150	19,350	21,550	22,550
Row dwellings	8,650	10,450	12,900	15,300	18,400	20,550	21,450
Walk-up	7,400	9,250	11,700	13,800	15,950	17,600	18,450
Elevator-structure	12,950	15,050	19,100				
Hammond, Ind.:							
Detached and semidetached	8,900	10,800	13,300	15,850	19,000	21,200	22,150
Row dwellings	8,500	10,250	12,650	15,050	18,100	20,200	21,100
Walk-up	7,250	9,100	11,500	13,550	15,700	17,300	18,150
Elevator-structure	12,700	14,750	18,700				
Lafayette, Ind.:							
Detached and semidetached	8,550	10,350	12,750	15,200	18,200	20,300	21,250
Row dwellings	8,150	9,850	12,150	14,450	17,350	19,350	20,200
Walk-up	6,950	8,700	11,000	13,000	15,050	16,600	17,400
Elevator-structure	12,300	14,300	18,100				
South Bend, Ind.:							
Detached and semidetached	8,650	10,450	12,850	15,350	18,400	20,500	21,450
Row dwellings	8,200	9,950	12,250	14,500	17,500	19,550	20,400
Walk-up	7,050	8,800	11,100	13,150	15,200	16,750	17,600
Elevator-structure	12,400	14,400	18,300				
Terre Haute, Ind.:							
Detached and semidetached	8,850	10,700	13,200	15,750	18,900	21,050	22,000
Row dwellings	8,450	10,200	12,550	14,950	17,950	20,050	20,950
Walk-up	7,200	9,000	11,400	13,450	15,600	17,200	18,050
Elevator-structure	12,600	14,650	18,600				
Detroit, Mich.:							
Detached and semidetached	12,250	12,450	15,300	18,250	21,950	24,450	25,600
Row dwellings	9,800	11,800	14,600	17,350	20,900	23,250	24,350
Walk-up	8,400	10,450	13,200	15,650	18,100	19,950	20,950
Elevator-structure	13,850	16,100	20,400				
Ann Arbor, Mich.:							
Detached and semidetached	12,250	12,450	15,300	18,250	21,950	24,450	25,600
Row dwellings	9,800	11,800	14,600	17,350	20,900	23,250	24,350
Walk-up	8,400	10,450	13,200	15,650	18,100	19,950	20,950
Elevator-structure	13,850	16,100	20,400				
Flint, Mich.:							
Detached and semidetached	11,700	11,900	14,700	17,600	21,000	23,450	24,600
Row dwellings	9,400	11,300	14,000	16,600	20,000	22,300	23,400
Walk-up	8,000	10,000	12,600	15,000	17,400	19,150	20,100
Elevator-structure	13,200	15,400	19,000				

PROTOTYPE PER UNIT COST SCHEDULE

REGION V—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Saginaw, Mich.:							
Detached and semidetached	11,750	11,950	14,700	17,500	21,050	23,450	24,600
Row dwellings	9,400	11,350	14,000	16,650	20,050	22,300	23,400
Walk-up	8,050	10,050	12,650	15,000	17,400	19,150	20,100
Elevator-structure	13,300	15,450	19,000				
Ypsilanti, Mich.:							
Detached and semidetached	12,150	12,350	15,150	18,050	21,750	24,200	25,350
Row dwellings	9,700	11,700	14,450	17,200	20,700	23,000	24,100
Walk-up	8,300	10,350	13,050	15,500	17,900	19,750	20,750
Elevator-structure	13,700	15,950	20,200				
Grand Rapids, Mich.:							
Detached and semidetached	8,900	10,750	13,250	15,800	19,000	21,200	22,150
Row dwellings	8,500	10,200	12,650	15,050	18,100	20,150	21,100
Walk-up	7,250	9,050	11,450	13,550	15,650	17,300	18,150
Elevator-structure	12,400	14,450	18,250				
Battle Creek, Mich.:							
Detached and semidetached	9,100	11,000	13,550	16,150	19,450	21,700	22,650
Row dwellings	8,700	10,450	12,950	15,400	18,500	20,600	21,600
Walk-up	7,400	9,250	11,700	13,850	16,000	17,700	18,550
Elevator-structure	12,700	14,800	18,650				
Benton Harbor, Mich.:							
Detached and semidetached	9,550	11,550	14,250	17,000	20,450	22,800	23,850
Row dwellings	9,150	10,950	13,600	16,200	19,450	21,700	23,800
Walk-up	7,800	9,750	12,300	14,600	16,850	18,600	19,550
Elevator-structure	13,350	15,550	19,650				
Jackson, Mich.:							
Detached and semidetached	9,500	11,500	14,150	16,900	20,300	22,650	23,650
Row dwellings	9,100	10,900	13,500	16,100	19,350	21,500	22,550
Walk-up	7,750	9,650	12,250	14,450	16,700	18,500	19,400
Elevator-structure	13,250	15,450	19,500				
Kalamazoo, Mich.:							
Detached and semidetached	8,950	10,850	13,350	15,900	19,150	21,350	22,300
Row dwellings	8,550	10,300	12,750	15,150	18,250	20,300	21,250
Walk-up	7,300	9,100	11,550	13,650	15,750	17,450	18,300
Elevator-structure	12,500	14,550	18,400				
Lansing, Mich.:							
Detached and semidetached	9,700	11,700	14,450	17,200	20,700	23,100	24,150
Row dwellings	9,250	11,100	13,800	16,400	19,750	21,950	23,000
Walk-up	7,900	9,850	12,500	14,750	17,050	18,850	19,800
Elevator-structure	12,950	15,100	19,100				
Marquette, Mich.:							
Detached and semidetached	8,600	10,350	12,800	15,250	18,350	20,450	21,350
Row dwellings	8,200	9,850	12,200	14,500	17,450	19,450	20,350
Walk-up	7,000	8,750	11,050	13,050	15,100	16,700	17,500
Elevator-structure	11,750	13,700	17,300				
Muskegon, Mich.:							
Detached and semidetached	8,900	10,750	13,250	15,800	19,000	21,200	22,150
Row dwellings	8,500	10,200	12,650	15,050	18,100	20,150	21,100
Walk-up	7,250	9,050	11,450	13,550	15,650	17,300	18,150
Elevator-structure	12,400	14,450	18,250				
Traverse City, Mich.:							
Detached and semidetached	9,800	11,800	14,550	17,350	20,850	23,300	24,350
Row dwellings	9,350	11,200	13,900	16,550	19,900	22,150	23,200
Walk-up	7,950	9,950	12,600	14,900	17,200	19,000	19,950
Elevator-structure	13,600	15,850	20,050				
Minneapolis, Minn.:							
Detached and semidetached	9,500	11,500	14,200	16,950	20,350	22,650	23,700
Row dwellings	9,100	10,950	13,600	16,100	19,350	21,550	22,550
Walk-up	7,800	9,700	12,250	14,500	16,750	18,500	19,400
Elevator-structure	12,450	14,450	18,300				
Duluth, Minn.:							
Detached and semidetached	9,650	11,650	14,400	17,200	20,650	23,000	24,050
Row dwellings	9,250	11,100	13,700	16,350	19,650	21,900	22,900
Walk-up	7,900	9,800	12,450	14,700	17,000	18,800	19,700
Elevator-structure	12,650	14,650	18,500				
Mankato, Minn.:							
Detached and semidetached	9,650	11,600	13,650	16,200	19,450	21,650	22,600
Row dwellings	8,700	10,450	12,900	15,300	18,600	20,600	21,550
Walk-up	7,450	9,200	11,700	13,850	16,000	17,650	18,550
Elevator-structure	11,900	13,850	17,450				

REGION V—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Rochester, Minn.:							
Detached and semidetached	9,300	11,250	13,000	16,550	19,900	22,150	23,150
Row dwellings	8,900	10,700	13,200	15,750	18,900	21,050	22,050
Walk-up	7,000	9,450	11,950	14,150	16,350	18,100	18,950
Elevator-structure	12,150	14,100	17,000				
St. Cloud, Minn.:							
Detached and semidetached	8,800	10,650	13,150	15,700	18,800	20,950	21,900
Row dwellings	8,400	10,150	12,500	14,900	17,900	19,950	20,850
Walk-up	7,200	8,900	11,350	13,400	15,500	17,100	17,950
Elevator-structure	11,500	13,350	16,000				
St. Paul, Minn.:							
Detached and semidetached	9,500	11,500	14,200	16,950	20,350	22,650	23,700
Row dwellings	9,100	10,950	13,500	16,100	19,350	21,550	22,550
Walk-up	7,800	9,650	12,250	14,500	16,750	18,500	19,400
Elevator-structure	12,350	14,350	18,150				
Worthington, Minn.:							
Detached and semidetached	8,700	10,550	13,050	15,550	18,650	20,800	21,750
Row dwellings	8,350	10,050	12,400	14,750	17,750	19,750	20,700
Walk-up	7,150	8,850	11,250	13,300	15,350	16,950	17,800
Elevator-structure	11,400	13,250	16,800				
Cincinnati, Ohio:							
Detached and semidetached	8,750	10,550	13,000	15,550	18,650	20,800	21,750
Row dwellings	8,350	10,050	12,400	14,750	17,750	19,750	20,700
Walk-up	7,150	8,850	11,250	13,300	15,400	16,950	17,800
Elevator-structure	12,550	14,500	18,450				
Dayton, Ohio:							
Detached and semidetached	8,750	10,550	13,000	15,550	18,650	20,800	21,750
Row dwellings	8,350	10,050	12,400	14,750	17,750	19,750	20,700
Walk-up	7,150	8,850	11,250	13,300	15,400	16,950	17,800
Elevator-structure	12,550	14,500	18,450				
Cleveland, Ohio:							
Detached and semidetached	9,400	11,400	14,050	16,750	20,150	22,400	23,450
Row dwellings	9,000	10,800	13,350	15,900	19,150	21,350	22,300
Walk-up	7,700	9,550	12,100	14,350	16,500	18,300	19,200
Elevator-structure	13,500	15,500	19,500				
Akron, Ohio:							
Detached and semidetached	9,050	11,000	13,550	16,150	19,400	21,600	22,600
Row dwellings	8,650	10,400	12,850	15,300	18,450	20,600	21,500
Walk-up	7,400	9,200	11,650	13,850	16,000	17,650	18,500
Elevator-structure	12,650	14,750	18,650				
Findlay, Ohio:							
Detached and semidetached	8,500	10,300	12,700	15,150	18,250	20,250	21,200
Row dwellings	8,150	9,750	12,100	14,400	17,300	19,200	20,150
Walk-up	6,950	8,650	10,950	13,000	15,000	16,550	17,350
Elevator-structure	12,050	14,000	17,750				
Lorain, Ohio:							
Detached and semidetached	8,650	10,600	13,400	16,050	19,250	21,400	22,400
Row dwellings	8,000	10,500	12,750	15,200	18,300	20,400	21,300
Walk-up	7,350	9,100	11,550	13,700	15,850	17,450	18,350
Elevator-structure	12,700	14,800	18,700				
Mansfield, Ohio:							
Detached and semidetached	8,750	10,600	13,050	15,550	18,700	20,800	21,750
Row dwellings	8,350	10,050	12,400	14,750	17,800	19,800	20,700
Walk-up	7,150	8,850	11,250	13,300	15,400	17,000	17,850
Elevator-structure	12,350	14,400	18,200				
Toledo, Ohio:							
Detached and semidetached	9,250	11,200	13,800	16,450	19,800	22,000	23,050
Row dwellings	8,850	10,650	13,150	15,650	18,850	21,000	21,950
Walk-up	7,550	9,400	11,900	14,100	16,300	18,000	18,900
Elevator-structure	13,000	15,150	19,150				
Youngstown, Ohio:							
Detached and semidetached	8,750	10,600	13,050	15,550	18,750	20,800	21,800
Row dwellings	8,350	10,050	12,400	14,800	17,800	19,800	20,750
Walk-up	7,150	8,900	11,250	13,350	15,450	17,000	17,850
Elevator-structure	12,400	14,450	18,250				
Columbus, Ohio:							
Detached and semidetached	8,750	10,600	13,100	15,600	18,750	20,900	21,850
Row dwellings	8,400	10,100	12,450	14,850	17,850	19,850	20,800
Walk-up	7,150	8,900	11,300	13,400	15,450	17,050	17,900
Elevator-structure	12,350	14,350	18,150				

REGION V—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Athens, Ohio:							
Detached and semidetached	8,900	10,750	13,300	15,850	19,050	21,250	22,200
Row dwellings	8,550	10,250	12,650	15,100	18,150	20,150	21,150
Walk-up	7,300	9,050	11,500	13,600	15,700	17,300	18,200
Elevator-structure	12,500	14,600	18,450				
Lima, Ohio:							
Detached and semidetached	8,750	10,600	13,100	15,600	18,750	20,900	21,850
Row dwellings	8,400	10,100	12,450	14,850	17,850	19,850	20,800
Walk-up	7,150	8,900	11,300	13,400	15,450	17,050	17,900
Elevator-structure	12,350	14,350	18,150				
Marietta, Ohio:							
Detached and semidetached	8,900	10,750	13,300	15,850	19,050	21,250	22,200
Row dwellings	8,550	10,250	12,650	15,100	18,150	20,150	21,150
Walk-up	7,300	9,050	11,500	13,600	15,700	17,300	18,200
Elevator-structure	12,500	14,600	18,450				
Newark, Ohio:							
Detached and semidetached	8,550	10,350	12,800	15,250	18,300	20,400	21,350
Row dwellings	8,200	9,850	12,150	14,500	17,450	19,400	20,300
Walk-up	7,000	8,700	11,050	13,100	15,100	16,500	17,500
Elevator-structure	12,050	14,000	17,700				
Springfield, Ohio:							
Detached and semidetached	8,750	10,600	13,100	15,600	18,750	20,900	21,850
Row dwellings	8,400	10,100	12,450	14,850	17,850	19,850	20,800
Walk-up	7,150	8,900	11,300	13,400	15,450	17,050	17,900
Elevator-structure	12,350	14,350	18,150				
Troy, Ohio:							
Detached and semidetached	8,600	10,450	12,900	15,350	18,450	20,550	21,500
Row dwellings	8,250	9,950	12,250	14,600	17,550	19,550	20,450
Walk-up	7,050	8,750	11,100	12,200	15,200	16,800	17,600
Elevator-structure	12,150	14,100	17,850				
Zanesville, Ohio:							
Detached and semidetached	8,900	10,750	13,300	15,850	19,050	21,250	22,200
Row dwellings	8,550	10,250	12,650	15,100	18,150	20,150	21,150
Walk-up	7,300	9,050	11,500	13,600	15,700	17,300	18,200
Elevator-structure	12,500	14,600	18,450				
Milwaukee, Wis.:							
Detached and semidetached	8,650	10,500	12,900	15,400	18,500	20,650	21,600
Row dwellings	8,300	9,950	12,300	14,650	17,600	19,600	20,550
Walk-up	7,100	8,800	11,150	13,200	15,250	16,850	17,650
Elevator-structure	12,000	14,050	18,050				
Eau Claire, Wis.:							
Detached and semidetached	8,450	10,250	12,600	15,050	18,050	20,150	21,100
Row dwellings	8,100	9,700	12,000	14,300	17,200	19,150	20,050
Walk-up	6,950	8,600	10,900	12,900	14,900	16,450	17,250
Elevator-structure	12,000	14,000	18,100				
Green Bay, Wis.:							
Detached and semidetached	8,050	9,800	12,050	14,350	17,250	19,250	20,150
Row dwellings	7,700	9,300	11,450	13,650	16,400	18,300	19,150
Walk-up	6,600	8,200	10,400	12,300	14,200	15,700	16,450
Elevator-structure	11,750	13,650	17,300				
Madison, Wis.:							
Detached and semidetached	8,600	10,400	12,800	15,200	18,250	20,300	21,250
Row dwellings	8,250	9,850	12,200	14,550	17,450	19,450	20,400
Walk-up	7,050	8,750	11,050	13,100	15,150	16,700	17,500
Elevator-structure	12,500	14,550	18,400				
Reedsville, Wis.:							
Detached and semidetached	8,250	10,000	12,300	14,700	17,650	19,700	20,600
Row dwellings	7,900	9,500	11,750	14,000	16,800	18,700	19,600
Walk-up	6,800	8,400	10,650	12,600	14,550	16,100	16,850
Elevator-structure	12,050	14,000	17,700				
Superior, Wis.:							
Detached and semidetached	8,800	10,650	13,100	15,650	18,800	20,850	21,850
Row dwellings	8,450	10,100	12,500	14,900	17,850	19,900	20,850
Walk-up	7,200	8,950	11,300	13,400	15,500	17,100	17,950
Elevator-structure	12,500	14,900	18,850				
Wausau, Wis.:							
Detached and semidetached	8,250	10,000	12,300	14,650	17,600	19,650	20,550
Row dwellings	7,900	9,450	11,700	13,950	16,750	18,650	19,550
Walk-up	6,750	8,400	10,600	12,550	14,500	16,050	16,800
Elevator-structure	12,000	13,950	17,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI

	Number of bedrooms						
	0	1	2	3	4	5	6
Little Rock, Ark.:							
Detached and semidetached	7,950	9,550	11,850	14,100	16,950	18,900	19,700
Row dwellings	7,550	9,150	11,300	13,450	16,150	18,000	18,800
Walk-up	6,500	8,100	10,200	12,100	14,050	15,450	16,200
Elevator-structure	10,350	12,000	15,200				
Fayetteville, Ark.:							
Detached and semidetached	7,900	9,450	11,750	14,000	16,800	18,750	19,550
Row dwellings	7,500	9,050	11,200	13,350	16,000	17,850	18,650
Walk-up	6,450	8,300	10,100	12,000	13,950	15,300	16,050
Elevator-structure	10,250	11,900	15,050				
Fort Smith, Ark.:							
Detached and semidetached	8,050	9,650	12,000	14,250	17,150	19,100	19,900
Row dwellings	7,650	9,250	11,400	13,600	16,300	18,200	19,000
Walk-up	6,600	8,200	10,300	12,250	14,200	15,600	16,400
Elevator-structure	10,450	12,150	15,350				
Jonesboro, Ark.:							
Detached and semidetached	7,850	9,400	11,650	13,900	16,700	18,600	19,400
Row dwellings	7,450	9,000	11,100	13,250	15,900	17,700	18,500
Walk-up	6,400	7,950	10,050	11,900	13,850	15,200	15,950
Elevator-structure	11,100	11,750	14,850				
Texarkana, Ark. and Tex.:							
Detached and semidetached	7,900	9,450	11,750	14,000	16,800	18,750	19,550
Row dwellings	7,500	9,050	11,200	13,350	16,000	17,850	18,650
Walk-up	6,450	8,300	10,100	12,000	13,950	15,300	16,050
Elevator-structure	10,250	11,900	15,050				
New Orleans, La.:							
Detached and semidetached	7,600	9,150	11,300	13,450	16,200	18,050	18,800
Row dwellings	7,200	8,700	10,800	12,850	15,400	17,150	17,950
Walk-up	6,200	7,750	9,750	11,550	13,400	14,750	15,450
Elevator-structure	11,850	13,750	17,450				
Baton Rouge, La.:							
Detached and semidetached	7,600	9,200	11,350	13,500	16,250	18,100	18,850
Row dwellings	7,200	8,750	10,850	12,900	15,450	17,200	18,000
Walk-up	6,200	7,800	9,800	11,600	13,450	14,800	15,500
Elevator-structure	11,750	13,650	17,300				
Buras, La.:							
Detached and semidetached	7,750	9,300	11,500	13,700	16,500	18,400	19,150
Row dwellings	7,350	8,850	11,000	13,100	15,700	17,450	18,250
Walk-up	6,300	7,900	9,900	11,750	13,650	15,000	15,700
Elevator-structure	12,050	14,000	17,750				
Houma, La.:							
Detached and semidetached	7,550	9,700	11,200	13,350	16,050	17,900	18,650
Row dwellings	7,350	8,900	10,700	12,700	15,250	16,700	17,800
Walk-up	6,150	7,700	9,650	11,450	13,300	14,600	15,300
Elevator-structure	11,750	13,650	17,300				
Lafayette, La.:							
Detached and semidetached	7,550	9,700	11,200	13,350	16,050	17,900	18,650
Row dwellings	7,350	8,900	10,700	12,700	15,250	16,700	17,800
Walk-up	6,150	7,700	9,650	11,450	13,300	14,600	15,300
Elevator-structure	11,750	13,650	17,300				
Lake Charles, La.:							
Detached and semidetached	7,600	9,150	11,300	13,450	16,200	18,100	18,800
Row dwellings	7,200	8,750	10,800	12,850	15,400	17,150	17,950
Walk-up	6,200	7,750	9,750	11,550	13,400	14,750	15,450
Elevator-structure	11,850	13,750	17,450				
Parks, La.:							
Detached and semidetached	7,300	8,750	10,850	12,900	15,550	17,300	18,000
Row dwellings	6,900	8,350	10,350	12,350	14,750	16,450	17,200
Walk-up	5,950	7,400	9,350	11,050	12,850	14,150	14,800
Elevator-structure	11,000	13,400	17,000				
Shreveport, La.:							
Detached and semidetached	7,450	9,000	11,150	13,250	15,950	17,800	18,550
Row dwellings	7,100	8,600	10,600	12,600	15,200	16,950	17,750
Walk-up	6,100	7,650	9,600	11,400	13,200	14,650	15,250
Elevator-structure	11,450	13,350	16,850				
Alexandria, La.:							
Detached and semidetached	7,200	8,700	10,800	12,850	15,450	17,250	17,950
Row dwellings	6,850	8,300	10,250	12,250	14,700	16,350	17,150
Walk-up	5,800	7,300	9,200	11,000	12,850	14,100	14,750
Elevator-structure	11,100	12,900	16,300				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Marshall, Tex.:							
Detached and semidetached	6,900	8,350	10,350	12,300	14,800	16,500	17,200
Row dwellings	6,600	8,000	9,850	11,750	14,100	15,700	16,450
Walk-up	5,650	7,050	8,900	10,600	12,250	13,500	14,150
Elevator-structure	10,650	12,350	15,650				
Monroe, La.:							
Detached and semidetached	7,150	8,650	10,700	12,700	15,300	17,100	17,800
Row dwellings	6,800	8,250	10,200	12,150	14,600	16,200	17,000
Walk-up	5,850	7,300	9,200	10,950	12,650	13,950	14,650
Elevator-structure	11,000	12,750	16,200				
Alamogordo, N. Mex.:							
Detached and semidetached	9,250	11,050	12,250	14,650	17,650	19,650	20,500
Row dwellings	8,850	10,600	11,750	14,000	16,800	18,700	19,550
Walk-up	7,550	9,400	10,650	12,550	14,600	16,050	16,850
Elevator-structure	12,750	14,800	18,750				
Albuquerque, N. Mex.:							
Detached and semidetached	8,400	10,050	11,200	13,350	16,100	17,950	18,700
Row dwellings	8,050	9,650	10,750	12,800	15,300	17,050	17,850
Walk-up	6,900	8,550	9,700	11,450	13,300	14,650	15,350
Elevator-structure	12,950	15,050	19,050				
Artesia, N. Mex.:							
Detached and semidetached	9,000	10,700	11,950	14,250	17,200	19,150	19,950
Row dwellings	8,600	10,300	11,500	13,650	16,300	18,150	19,050
Walk-up	7,350	9,150	10,350	12,250	14,200	15,600	16,400
Elevator-structure	12,600	14,650	18,550				
Carlsbad, N. Mex.:							
Detached and semidetached	9,150	10,900	12,150	14,500	17,500	19,500	20,300
Row dwellings	8,750	10,500	11,700	13,900	16,600	18,500	19,400
Walk-up	7,500	9,300	10,550	12,450	14,450	15,900	16,700
Elevator-structure	12,600	14,650	18,550				
Clovis, N. Mex.:							
Detached and semidetached	9,000	10,750	11,950	14,250	17,200	19,150	19,950
Row dwellings	8,600	10,300	11,450	13,650	16,350	18,200	19,050
Walk-up	7,350	9,150	10,350	12,200	14,200	15,650	16,400
Elevator-structure	12,400	14,400	18,250				
Fort Sumner, N. Mex.:							
Detached and semidetached	9,650	11,500	12,800	15,300	18,450	20,550	21,400
Row dwellings	9,200	11,050	12,250	14,650	17,550	19,500	20,400
Walk-up	7,900	9,800	11,100	13,100	15,200	16,800	17,600
Elevator-structure	13,300	15,450	19,650				
Gallup, N. Mex.:							
Detached and semidetached	9,550	11,400	12,700	15,150	18,250	20,350	21,200
Row dwellings	9,150	10,950	12,200	14,500	17,350	19,350	20,250
Walk-up	7,850	9,700	11,000	13,000	15,100	16,600	17,400
Elevator-structure	13,400	15,300	19,400				
Hobbs, N. Mex.:							
Detached and semidetached	9,000	10,750	11,950	14,250	17,200	19,150	19,950
Row dwellings	8,600	10,300	11,450	13,650	16,350	18,200	19,050
Walk-up	7,350	9,150	10,350	12,200	14,200	15,650	16,400
Elevator-structure	12,400	14,400	18,250				
Las Cruces, N. Mex.:							
Detached and semidetached	9,000	10,750	11,950	14,250	17,200	19,150	19,950
Row dwellings	8,600	10,300	11,450	13,650	16,350	18,200	19,050
Walk-up	7,350	9,150	10,350	12,200	14,200	15,650	16,400
Elevator-structure	12,400	14,400	18,250				
Las Vegas, N. Mex.:							
Detached and semidetached	9,350	11,200	12,500	14,900	17,950	20,000	20,850
Row dwellings	9,000	10,750	12,000	14,300	17,050	19,000	19,900
Walk-up	7,700	9,550	10,800	12,700	14,850	16,350	17,100
Elevator-structure	12,950	15,050	19,050				
Los Alamos, N. Mex.:							
Detached and semidetached	9,600	11,500	12,800	15,250	18,400	20,550	21,400
Row dwellings	9,200	11,050	12,250	14,650	17,600	19,500	20,400
Walk-up	7,900	9,800	11,100	13,100	15,200	16,750	17,600
Elevator-structure	13,300	15,450	19,650				
Raton, N. Mex.:							
Detached and semidetached	9,350	11,200	12,500	14,900	17,950	20,000	20,850
Row dwellings	9,000	10,750	12,000	14,300	17,050	19,000	19,900
Walk-up	7,700	9,550	10,800	12,700	14,850	16,350	17,100
Elevator-structure	12,950	15,050	19,050				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Santa Fe, N. Mex.:							
Detached and semidetached	9,350	11,200	12,500	14,900	17,950	20,000	20,850
Row dwellings	9,000	10,750	12,000	14,300	17,050	19,000	19,900
Walk-up	7,700	9,550	10,800	12,750	14,850	16,350	17,100
Elevator-structure	12,950	15,050	19,050				
Silver City, N. Mex.:							
Detached and semidetached	9,050	11,500	12,800	15,300	18,450	20,550	21,400
Row dwellings	9,200	11,050	12,250	14,050	17,550	19,500	20,400
Walk-up	7,900	9,800	11,100	13,100	15,200	16,800	17,600
Elevator-structure	13,300	15,450	19,050				
Truth or Consequences, N. Mex.:							
Detached and semidetached	9,000	10,750	11,950	14,250	17,200	19,150	19,950
Row dwellings	8,600	10,300	11,450	13,650	16,350	18,200	19,050
Walk-up	7,350	9,150	10,350	12,200	14,200	15,650	16,400
Elevator-structure	12,400	14,400	18,250				
Window Rock, N. Mex.:							
Detached and semidetached	10,150	12,100	13,450	15,950	19,250	21,450	22,500
Row dwellings	9,650	11,500	12,800	15,250	18,350	20,450	21,350
Walk-up	8,250	10,250	11,600	13,700	15,850	17,500	18,400
Elevator-structure	13,200	15,300	19,350				
Oklahoma City, Okla.:							
Detached and semidetached	7,900	9,500	11,800	14,050	16,900	18,850	19,650
Row dwellings	7,550	9,100	11,250	13,400	16,100	17,900	18,700
Walk-up	6,450	8,050	10,150	12,050	14,000	15,400	16,150
Elevator-structure	10,200	11,800	14,950				
Ada, Okla.:							
Detached and semidetached	8,250	9,950	12,350	14,700	17,650	19,700	20,550
Row dwellings	7,900	9,500	11,750	14,000	16,850	18,700	19,550
Walk-up	6,750	8,400	10,600	12,600	14,650	16,100	16,900
Elevator-structure	10,400	12,000	15,200				
Ardmore, Okla.:							
Detached and semidetached	8,450	10,150	12,650	15,050	18,100	20,150	21,000
Row dwellings	8,100	9,750	12,050	14,350	17,200	19,150	20,000
Walk-up	6,900	8,600	10,850	12,900	15,000	16,450	17,300
Elevator-structure	10,850	12,550	15,600				
Enid, Okla.:							
Detached and semidetached	8,400	10,100	12,500	14,900	17,950	20,000	20,850
Row dwellings	8,050	9,650	11,950	14,200	17,100	19,000	19,850
Walk-up	6,850	8,550	10,750	12,800	14,850	16,350	17,100
Elevator-structure	10,750	12,450	15,750				
Guymon, Okla.:							
Detached and semidetached	8,500	10,250	12,750	15,150	18,250	20,350	21,200
Row dwellings	8,150	9,800	12,150	14,450	17,350	19,300	20,150
Walk-up	6,950	8,700	10,950	13,000	15,100	16,600	17,400
Elevator-structure	10,950	12,650	16,000				
Lawton, Okla.:							
Detached and semidetached	8,050	9,650	12,000	14,300	17,200	19,200	20,000
Row dwellings	7,700	9,250	11,450	13,650	16,400	18,250	19,050
Walk-up	6,550	8,200	10,350	12,250	14,250	15,700	16,450
Elevator-structure	10,050	11,650	14,750				
Shawnee, Okla.:							
Detached and semidetached	8,250	9,950	12,350	14,700	17,650	19,700	20,550
Row dwellings	7,900	9,500	11,750	14,000	16,850	18,700	19,550
Walk-up	6,750	8,400	10,600	12,600	14,650	16,100	16,900
Elevator-structure	10,400	12,000	15,200				
Stillwater, Okla.:							
Detached and semidetached	8,250	9,950	12,350	14,700	17,650	19,700	20,550
Row dwellings	7,900	9,500	11,750	14,000	16,850	18,700	19,550
Walk-up	6,750	8,400	10,600	12,600	14,650	16,100	16,900
Elevator-structure	10,400	12,000	15,200				
Woodward, Okla.:							
Detached and semidetached	8,400	10,100	12,500	14,900	17,950	20,000	20,850
Row dwellings	8,050	9,650	11,950	14,200	17,100	19,000	19,850
Walk-up	6,850	8,550	10,750	12,800	14,850	16,350	17,100
Elevator-structure	10,750	12,450	15,750				
Tulsa, Okla.:							
Detached and semidetached	7,950	9,550	11,850	14,100	16,950	18,900	19,700
Row dwellings	7,550	9,150	11,300	13,450	16,150	18,000	18,800
Walk-up	6,500	8,100	10,200	12,100	14,050	15,450	16,200
Elevator-structure	10,550	12,250	15,500				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Bartlesville, Okla.:							
Detached and semidetached	7,950	9,550	11,850	14,100	16,950	18,900	19,700
Row dwellings	7,550	9,150	11,300	13,450	16,150	18,000	18,800
Walk-up	6,500	8,100	10,200	12,100	14,050	15,450	16,200
Elevator-structure	10,550	12,250	15,500				
McAlester, Okla.:							
Detached and semidetached	7,750	9,300	11,550	13,750	16,500	18,400	19,200
Row dwellings	7,350	8,900	11,000	13,100	15,750	17,550	18,300
Walk-up	6,350	7,900	9,950	11,800	13,700	15,050	15,800
Elevator-structure	10,300	11,950	15,100				
Muskogee, Okla.:							
Detached and semidetached	8,250	9,900	12,250	14,600	17,550	19,550	20,400
Row dwellings	7,800	9,450	11,700	13,900	16,700	18,650	19,450
Walk-up	6,750	8,400	10,550	12,500	14,550	16,000	16,750
Elevator-structure	10,900	12,650	16,050				
Dallas, Tex.:							
Detached and semidetached	7,300	8,750	10,850	12,950	15,550	17,350	18,100
Row dwellings	6,950	8,350	10,350	12,350	14,800	16,500	17,250
Walk-up	5,950	7,450	9,350	11,100	12,900	14,150	14,850
Elevator-structure	11,150	12,950	16,400				
Sherman, Tex.:							
Detached and semidetached	74,450	8,900	11,050	13,150	15,800	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,550
Walk-up	6,050	7,600	9,500	11,300	13,100	14,400	15,100
Elevator-structure	11,700	13,200	16,700				
Tyler, Tex.:							
Detached and semidetached	7,650	9,050	11,200	13,400	16,100	17,950	18,700
Row dwellings	7,200	8,650	10,700	12,800	15,300	17,100	17,850
Walk-up	6,150	7,700	9,650	11,600	13,350	14,650	15,350
Elevator-structure	11,050	13,400	17,000				
Waco, Tex.:							
Detached and semidetached	7,450	8,900	11,050	13,150	15,800	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,550
Walk-up	6,050	7,600	9,500	11,300	13,100	14,400	15,100
Elevator-structure	11,700	13,200	16,700				
Fort Worth, Tex.:							
Detached and semidetached	7,350	8,850	10,950	13,050	15,700	17,500	18,250
Row dwellings	7,000	8,450	10,450	12,450	14,950	16,650	17,400
Walk-up	6,000	7,550	9,450	11,200	13,000	14,350	15,000
Elevator-structure	11,100	12,950	16,450				
Abilene, Tex.:							
Detached and semidetached	7,600	9,150	11,300	13,500	16,200	18,050	18,850
Row dwellings	7,250	8,700	10,800	12,850	15,450	17,200	17,950
Walk-up	6,200	7,750	9,750	11,650	13,450	14,750	15,400
Elevator-structure	11,200	13,050	16,050				
San Angelo, Tex.:							
Detached and semidetached	7,650	9,200	11,400	13,600	16,350	18,200	19,000
Row dwellings	7,300	8,800	10,900	12,950	15,550	17,350	18,100
Walk-up	6,250	7,800	9,850	11,650	13,550	14,900	15,600
Elevator-structure	11,200	13,050	17,100				
Wichita Falls, Tex.:							
Detached and semidetached	7,650	9,200	11,400	13,600	16,350	18,200	19,000
Row dwellings	7,300	8,800	10,900	12,950	15,550	17,350	18,100
Walk-up	6,250	7,800	9,850	11,650	13,550	14,900	15,600
Elevator-structure	11,200	13,050	17,100				
Houston, Tex.:							
Detached and semidetached	7,400	8,900	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,100	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,400	15,100
Elevator-structure	11,350	13,200	16,700				
Beaumont, Tex.:							
Detached and semidetached	7,600	9,200	11,350	13,500	16,250	18,100	18,900
Row dwellings	7,250	8,750	10,850	12,850	15,500	17,250	18,000
Walk-up	6,200	7,750	9,800	11,600	13,450	14,800	15,550
Elevator-structure	11,250	13,050	17,100				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Bryan, Tex.:							
Detached and semidetached	7,250	8,800	10,850	12,950	15,600	17,350	18,100
Row dwellings	6,950	8,400	10,350	12,350	14,850	16,500	17,250
Walk-up	5,950	7,400	9,400	11,100	12,900	14,200	14,900
Elevator-structure	11,150	13,000	16,400				
El Campo, Tex.:							
Detached and semidetached	7,350	8,850	10,950	13,050	15,700	17,500	18,250
Row dwellings	7,000	8,500	10,450	12,450	14,950	16,650	17,400
Walk-up	6,000	7,500	9,450	11,200	13,000	14,350	15,000
Elevator-structure	11,250	13,100	16,550				
Lufkin, Tex.:							
Detached and semidetached	7,400	8,950	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,550	10,550	12,550	15,100	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,450	15,150
Elevator-structure	11,350	13,200	16,700				
Texas City, Tex.:							
Detached and semidetached	7,400	8,950	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,550	10,550	12,550	15,100	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,450	15,150
Elevator-structure	11,350	13,200	16,700				
Lubbock, Tex.:							
Detached and semidetached	7,400	8,900	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,400	15,100
Elevator-structure	10,850	12,600	15,950				
Amarillo, Tex.:							
Detached and semidetached	8,000	9,650	11,950	14,250	17,200	19,150	19,950
Row dwellings	7,650	9,200	11,450	13,600	16,300	18,200	19,000
Walk-up	6,550	8,200	10,350	12,250	14,200	15,600	16,350
Elevator-structure	11,450	13,300	16,850				
El Paso, Tex.:							
Detached and semidetached	7,550	9,050	11,250	13,400	16,150	18,000	18,750
Row dwellings	7,200	8,650	10,750	12,800	15,350	17,150	17,900
Walk-up	6,200	7,700	9,750	11,500	13,350	14,700	15,400
Elevator-structure	10,750	12,500	15,800				
Midland, Tex.:							
Detached and semidetached	7,400	8,900	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,400	15,100
Elevator-structure	10,850	12,600	15,950				
Odessa, Tex.:							
Detached and semidetached	7,400	8,900	11,050	13,150	15,850	17,650	18,400
Row dwellings	7,050	8,500	10,550	12,550	15,050	16,800	17,550
Walk-up	6,050	7,550	9,550	11,300	13,100	14,400	15,100
Elevator structure	10,850	12,600	15,950				
San Antonio, Tex.:							
Detached and semidetached	7,250	8,750	10,800	12,900	15,600	17,250	18,000
Row dwellings	6,900	8,350	10,300	12,300	14,700	16,450	17,150
Walk-up	5,900	7,400	9,300	11,050	12,850	14,100	14,800
Elevator-structure	10,600	12,300	15,600				
Austin, Tex.:							
Detached and semidetached	7,200	8,700	10,700	12,800	15,350	17,100	17,850
Row dwellings	6,850	8,300	10,200	12,200	14,650	16,300	17,000
Walk-up	5,850	7,350	9,200	10,900	12,700	13,400	14,100
Elevator-structure	10,500	12,200	15,450				
Corpus Christi, Tex.:							
Detached and semidetached	7,300	8,800	10,900	13,000	15,650	17,400	18,150
Row dwellings	6,950	8,400	10,400	12,400	14,850	16,600	17,300
Walk-up	5,950	7,450	9,400	11,150	12,950	14,200	14,900
Elevator-structure	10,700	12,400	15,750				
Del Rio, Tex.:							
Detached and semidetached	7,550	9,100	11,200	13,400	16,150	17,950	18,750
Row dwellings	7,200	8,700	10,750	12,850	15,350	17,150	17,850
Walk-up	6,150	7,700	9,700	11,500	13,400	14,700	15,400
Elevator-structure	11,050	12,800	16,250				
Eagle Pass, Tex.:							
Detached and semidetached	7,750	9,350	11,550	13,750	16,550	18,400	19,200
Row dwellings	7,350	8,900	11,000	13,150	15,750	17,550	18,300
Walk-up	6,350	7,900	9,900	11,800	13,850	15,050	15,800
Elevator-structure	11,050	13,150	16,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Harlinger, Tex.:							
Detached and semidetached	7,600	9,200	11,350	13,550	16,300	18,100	18,900
Row dwellings	7,250	8,750	10,800	12,900	15,500	17,300	18,000
Walk-up	6,200	7,750	9,750	11,600	13,500	14,800	15,550
Elevator-structure	11,150	12,900	16,400				
Junction, Tex.:							
Detached and semidetached	7,850	9,500	11,700	14,000	16,800	18,700	19,500
Row dwellings	7,500	9,050	11,150	13,350	16,000	17,850	18,600
Walk-up	6,400	8,000	10,100	12,000	13,950	15,300	16,050
Elevator-structure	11,500	13,350	16,900				
Laredo, Tex.:							
Detached and semidetached	7,550	9,100	11,250	13,450	16,150	17,950	18,750
Row dwellings	7,200	8,700	10,750	12,800	15,350	17,150	17,850
Walk-up	6,150	7,700	9,700	11,500	13,400	14,700	15,400
Elevator-structure	11,050	12,800	16,250				
Victoria, Tex.:							
Detached and semidetached	7,800	9,400	11,600	13,900	16,650	18,550	19,350
Row dwellings	7,400	9,000	11,100	13,250	15,850	17,700	18,450
Walk-up	6,350	7,950	10,000	11,900	13,800	15,150	15,900
Elevator-structure	11,400	13,250	16,800				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VII

	Number of bedrooms						
	0	1	2	3	4	5	6
Kansas City, Kans.:							
Detached and semidetached	8,700	10,500	12,950	15,450	18,600	20,700	21,650
Row dwellings	8,300	10,000	12,350	14,700	17,700	19,700	20,600
Walk-up	7,100	8,850	11,200	13,250	15,350	16,900	17,750
Elevator-structure	12,700	14,750	18,650				
Kansas City, Mo.:							
Detached and semidetached	8,700	10,500	12,950	15,450	18,600	20,700	21,650
Row dwellings	8,300	10,000	12,350	14,700	17,700	19,700	20,600
Walk-up	7,100	8,850	11,200	13,250	15,350	16,900	17,750
Elevator-structure	12,700	14,750	18,650				
Joplin, Mo.:							
Detached and semidetached	8,100	9,800	12,100	14,400	17,350	19,300	20,200
Row dwellings	7,750	9,350	11,600	13,700	16,500	18,400	19,200
Walk-up	6,600	8,250	10,450	12,350	14,300	15,750	16,550
Elevator-structure	11,850	13,750	17,400				
St. Joseph, Mo.:							
Detached and semidetached	8,350	10,100	12,450	14,850	17,850	19,900	20,800
Row dwellings	7,950	9,600	11,850	14,100	17,000	18,900	19,800
Walk-up	6,800	8,500	10,750	12,750	14,750	16,250	17,050
Elevator-structure	12,200	14,150	17,900				
Sedalia, Mo.:							
Detached and semidetached	8,350	10,100	12,450	14,850	17,850	19,900	20,800
Row dwellings	7,950	9,600	11,850	14,100	17,000	18,900	19,800
Walk-up	6,800	8,500	10,750	12,750	14,750	16,250	17,050
Elevator-structure	12,200	14,150	17,900				
Springfield, Mo.:							
Detached and semidetached	8,300	10,000	12,350	14,700	17,700	19,700	20,600
Row dwellings	7,900	9,550	11,750	14,000	16,850	18,750	19,600
Walk-up	6,750	8,450	10,650	12,600	14,600	16,100	16,900
Elevator-structure	12,100	14,050	17,750				
Topeka, Kans.:							
Detached and semidetached	8,400	10,150	12,550	14,950	18,000	20,000	20,950
Row dwellings	8,050	9,650	11,900	14,200	17,100	19,050	19,900
Walk-up	6,850	8,550	10,850	12,800	14,850	16,350	17,150
Elevator-structure	11,950	13,850	17,500				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VII—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Garden City, Kans.:							
Detached and semidetached	8,250	10,000	12,350	14,700	17,700	19,650	20,600
Row dwellings	7,900	9,500	11,750	13,950	16,800	18,750	19,550
Walk-up	6,750	8,400	10,650	12,000	14,000	16,050	16,850
Elevator-structure	11,750	13,600	17,200				
Pittsburg, Kans.:							
Detached and semidetached	8,100	9,800	12,100	14,450	17,400	19,300	20,250
Row dwellings	7,750	9,300	11,550	13,700	16,500	18,400	19,200
Walk-up	6,600	8,250	10,500	12,350	14,350	15,800	16,550
Elevator-structure	11,550	13,350	16,900				
Salina, Kans.:							
Detached and semidetached	7,750	9,350	11,600	13,800	16,600	18,450	19,350
Row dwellings	7,450	8,900	11,050	13,100	15,800	17,600	18,350
Walk-up	6,300	7,900	10,000	11,800	13,700	15,100	15,850
Elevator-structure	11,050	12,800	16,150				
Wichita, Kans.:							
Detached and semidetached	8,550	10,300	12,750	15,200	18,300	20,300	21,300
Row dwellings	8,200	9,800	12,150	14,400	17,350	19,350	20,200
Walk-up	6,950	8,700	11,000	13,000	15,100	16,600	17,400
Elevator-structure	11,550	13,350	16,900				
St. Louis, Mo.:							
Detached and semidetached	8,850	10,650	13,150	15,700	18,900	21,000	22,000
Row dwellings	8,450	10,150	12,550	14,950	17,950	20,000	20,900
Walk-up	7,300	9,000	11,350	13,450	15,600	17,150	18,000
Elevator-structure	12,850	14,900	18,850				
Cape Girardeau, Mo.:							
Detached and semidetached	8,400	10,150	12,500	14,950	18,000	20,000	20,900
Row dwellings	8,050	9,650	11,950	14,250	17,100	19,050	19,900
Walk-up	6,950	8,550	10,500	12,500	14,550	16,200	17,150
Elevator-structure	12,250	14,200	17,950				
Columbia, Mo.:							
Detached and semidetached	8,700	10,500	12,950	15,450	18,600	20,650	21,650
Row dwellings	8,300	10,000	12,350	14,700	17,650	19,700	20,650
Walk-up	7,100	8,850	11,150	13,250	15,300	16,850	17,700
Elevator-structure	12,650	14,650	18,550				
Kirksville, Mo.:							
Detached and semidetached	8,700	10,500	12,950	15,450	18,600	20,650	21,650
Row dwellings	8,300	10,000	12,350	14,700	17,650	19,700	20,650
Walk-up	7,100	8,850	11,150	13,250	15,300	16,850	17,700
Elevator-structure	12,650	14,650	18,550				
Rolla, Mo.:							
Detached and semidetached	7,900	9,550	11,800	14,050	16,900	18,800	19,700
Row dwellings	7,550	9,100	11,250	13,400	16,150	17,900	18,700
Walk-up	6,450	8,050	10,150	12,050	13,950	15,250	16,100
Elevator-structure	11,500	13,250	16,850				
Des Moines, Iowa:							
Detached and semidetached	8,600	10,400	12,800	15,300	18,400	20,450	21,400
Row dwellings	8,200	9,900	12,200	14,550	17,500	19,550	20,350
Walk-up	7,000	8,750	11,050	13,100	15,200	16,700	17,550
Elevator-structure	11,700	13,600	17,200				
Bettendorf, Iowa:							
Detached and semidetached	8,850	10,650	13,150	15,650	19,150	21,200	22,200
Row dwellings	8,450	10,200	12,700	15,150	18,550	20,750	21,700
Walk-up	7,300	9,100	11,700	13,850	15,850	17,400	18,300
Elevator-structure	12,100	14,050	17,750				
Cedar Rapids, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,800	19,050	21,150	22,150
Row dwellings	8,200	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,400	13,550	15,700	17,250	18,150
Elevator-structure	12,000	13,850	17,550				
Council Bluffs, Iowa:							
Detached and semidetached	8,300	10,000	12,300	14,700	17,700	19,700	20,600
Row dwellings	7,900	9,550	11,750	14,000	16,850	18,750	19,550
Walk-up	6,750	8,400	10,650	12,000	14,050	16,050	16,900
Elevator-structure	11,150	13,000	16,400				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VII—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Davenport, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,800	19,050	21,150	22,150
Row dwellings	8,500	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,450	13,550	15,700	17,250	18,150
Elevator-structure	12,100	14,050	17,750				
Dubuque, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,800	19,050	21,150	22,150
Row dwellings	8,500	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,450	13,550	15,700	17,250	18,150
Elevator-structure	11,600	13,850	17,500				
Mason City, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,800	19,050	21,150	22,150
Row dwellings	8,500	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,450	13,550	15,700	17,250	18,150
Elevator-structure	11,600	13,850	17,500				
Sioux City, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,850	19,050	21,150	22,150
Row dwellings	8,500	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,450	13,550	15,700	17,300	18,150
Elevator-structure	11,600	13,850	17,500				
Waterloo, Iowa:							
Detached and semidetached	8,600	10,750	13,250	15,850	19,050	21,150	22,150
Row dwellings	8,500	10,250	12,600	15,050	18,100	20,600	21,650
Walk-up	7,250	9,050	11,450	13,550	15,700	17,300	18,150
Elevator-structure	11,600	13,850	17,500				
Omaha, Nebr.:							
Detached and semidetached	8,300	10,000	12,300	14,700	17,700	19,700	20,600
Row dwellings	7,900	9,500	11,750	14,000	16,850	18,750	19,600
Walk-up	6,750	8,400	10,650	12,000	14,000	16,100	16,900
Elevator-structure	11,800	13,700	17,350				
Grand Island, Nebr.:							
Detached and semidetached	8,650	10,400	12,800	15,300	18,450	20,550	21,450
Row dwellings	8,250	9,900	12,200	14,600	17,550	19,550	20,450
Walk-up	7,050	8,750	11,100	13,150	15,200	16,800	17,600
Elevator-structure	12,200	14,150	17,900				
Lincoln, Nebr.:							
Detached and semidetached	8,250	9,950	12,200	14,600	17,600	19,600	20,450
Row dwellings	7,850	9,450	11,700	13,900	16,750	18,650	19,500
Walk-up	6,700	8,350	10,600	12,600	14,600	16,600	16,850
Elevator-structure	11,600	13,500	17,050				
Norfolk, Nebr.:							
Detached and semidetached	8,450	10,200	12,600	14,950	18,000	20,050	20,950
Row dwellings	8,050	9,650	11,950	14,250	17,150	19,100	19,950
Walk-up	6,850	8,550	10,850	12,850	14,850	16,400	17,200
Elevator-structure	11,600	13,500	17,000				
North Platte, Nebr.:							
Detached and semidetached	8,450	10,200	12,600	14,950	18,000	20,050	20,950
Row dwellings	8,050	9,650	11,950	14,250	17,150	19,100	19,950
Walk-up	6,850	8,550	10,850	12,850	14,850	16,400	17,200
Elevator-structure	11,600	13,500	17,000				
O'Neill, Nebr.:							
Detached and semidetached	8,400	10,100	12,400	14,850	17,900	19,900	20,800
Row dwellings	8,000	9,600	11,850	14,150	17,000	18,950	19,800
Walk-up	6,800	8,500	10,750	12,700	14,750	16,250	17,050
Elevator-structure	11,500	13,700	17,350				
Scottsbluff, Nebr.:							
Detached and semidetached	8,500	10,250	12,600	15,100	18,150	20,200	21,150
Row dwellings	8,100	9,750	12,050	14,350	17,300	19,250	20,150
Walk-up	6,950	8,600	10,950	12,950	15,000	16,500	17,350
Elevator-structure	12,000	13,900	17,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VIII

	Number of bedrooms						
	0	1	2	3	4	5	6
Denver, Colo:							
Detached and semidetached	8,550	10,300	12,700	15,150	18,250	20,300	21,250
Row dwellings	8,150	9,800	12,100	14,400	17,350	19,300	20,200
Walkup	6,950	8,700	11,000	13,000	15,050	16,600	17,400
Elevator-structure	12,200	14,200	17,950				
Colorado Springs, Colo.:							
Detached and semidetached	8,550	10,300	12,700	15,150	18,250	20,300	21,250
Row dwellings	8,150	9,800	12,100	14,400	17,350	19,300	20,200
Walkup	6,950	8,700	11,000	13,000	15,050	16,600	17,400
Elevator-structure	12,200	14,200	17,950				
Durango, Colo.:							
Detached and semidetached	9,000	10,800	13,450	15,900	19,200	21,300	22,300
Row dwellings	8,550	10,300	12,700	15,150	18,200	20,250	21,200
Walkup	7,300	9,150	11,550	13,650	15,800	17,450	18,300
Elevator-structure	12,800	14,900	18,850				
Grand Junction, Colo.:							
Detached and semidetached	8,900	10,750	13,250	15,800	19,000	21,150	22,150
Row dwellings	8,500	10,200	12,600	15,000	18,100	20,100	21,050
Walkup	7,250	9,050	11,450	13,500	15,700	17,300	18,150
Elevator-structure	12,700	14,800	18,700				
Greeley, Colo.:							
Detached and semidetached	9,000	10,800	13,300	15,900	19,200	21,300	22,300
Row dwellings	8,550	10,300	12,700	15,100	18,200	20,300	21,200
Walk-up	7,300	9,150	11,550	13,650	15,800	17,450	18,250
Elevator-structure	11,700	13,600	17,200				
Pueblo, Colo.:							
Detached and semidetached	8,350	10,050	12,400	14,750	17,850	19,800	20,700
Row dwellings	7,950	9,550	11,800	14,050	16,900	18,800	19,700
Walk-up	6,750	8,500	10,700	12,700	14,650	16,200	16,950
Elevator-structure	11,900	13,850	17,500				
Helena, Mont.:							
Detached and semidetached	8,300	9,950	12,300	14,650	17,650	19,650	20,550
Row dwellings	7,900	9,450	11,700	13,950	16,800	18,650	19,550
Walk-up	7,050	8,900	11,250	13,250	15,350	16,950	17,750
Elevator-structure	12,400	14,400	18,250				
Anaconda, Mont.:							
Detached and semidetached	8,600	10,300	12,750	15,150	18,250	20,350	21,250
Row dwellings	8,150	9,800	12,100	14,450	17,400	19,300	20,250
Walk-up	7,300	9,200	11,650	13,700	15,900	17,550	18,350
Elevator-structure	12,850	14,900	18,900				
Billings, Mont.:							
Detached and semidetached	8,050	9,650	11,950	14,200	17,100	19,050	19,950
Row dwellings	7,650	9,150	11,350	13,550	16,300	18,100	18,950
Walk-up	6,850	8,650	10,900	12,850	14,900	16,450	17,200
Elevator-structure	12,050	13,950	17,700				
Bozeman, Mont.:							
Detached and semidetached	8,450	10,100	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,600	11,900	14,200	17,100	18,950	19,900
Walk-up	7,150	9,050	11,450	13,500	15,600	17,250	18,050
Elevator-structure	12,600	14,650	18,650				
Butte, Mont.:							
Detached and semidetached	8,600	10,300	12,750	15,150	18,250	20,350	21,250
Row dwellings	8,150	9,800	12,100	14,450	17,400	19,300	20,250
Walk-up	7,300	9,200	11,650	13,700	15,900	17,550	18,350
Elevator-structure	12,850	14,900	18,900				
Dillon, Mont.:							
Detached and semidetached	8,600	10,300	12,750	15,150	18,250	20,350	21,250
Row dwellings	8,150	9,800	12,100	14,450	17,400	19,300	20,250
Walk-up	7,300	9,200	11,650	13,700	15,900	17,550	18,350
Elevator-structure	12,850	14,900	18,900				
Glasgow, Mont.:							
Detached and semidetached	8,450	10,100	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,600	11,900	14,200	17,100	18,950	19,900
Walk-up	7,150	9,050	11,450	13,500	15,600	17,250	18,050
Elevator-structure	12,600	14,650	18,650				
Glendive, Mont.:							
Detached and semidetached	8,450	10,100	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,600	11,900	14,200	17,100	18,950	19,900
Walk-up	7,150	9,050	11,450	13,500	15,600	17,250	18,050
Elevator-structure	12,600	14,650	18,650				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VIII—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Great Falls, Mont.:							
Detached and semidetached	8,650	10,400	12,850	15,300	18,450	20,550	21,450
Row dwellings	8,250	9,900	12,250	14,600	17,550	19,500	20,450
Walk-up	7,350	9,300	11,750	13,850	16,050	17,700	18,550
Elevator-structure	12,950	15,050	19,100				
Havre, Mont.:							
Detached and semidetached	8,450	10,100	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,600	11,900	14,200	17,100	18,950	19,900
Walk-up	7,150	9,050	11,450	13,500	15,600	17,250	18,050
Elevator-structure	12,600	14,650	18,550				
Kallspell, Mont.:							
Detached and semidetached	8,150	9,750	12,050	14,350	17,300	19,250	20,150
Row dwellings	7,750	9,250	11,450	13,650	16,450	18,300	19,150
Walk-up	6,900	8,700	11,050	13,000	15,050	16,600	17,400
Elevator-structure	12,150	14,100	17,900				
Laurel, Mont.:							
Detached and semidetached	8,200	9,850	12,200	14,500	17,450	19,450	20,350
Row dwellings	7,800	9,350	11,600	13,800	16,650	18,450	19,350
Walk-up	7,000	8,800	11,150	13,100	15,200	16,800	17,650
Elevator-structure	12,250	14,250	18,100				
Libby, Mont.:							
Detached and semidetached	8,150	9,750	12,050	14,350	17,300	19,250	20,150
Row dwellings	7,750	9,250	11,450	13,650	16,450	18,300	19,150
Walk-up	6,900	8,700	11,050	13,000	15,050	16,600	17,400
Elevator-structure	12,150	14,100	17,900				
Miles City, Mont.:							
Detached and semidetached	8,450	10,100	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,600	11,900	14,200	17,100	18,950	19,900
Walk-up	7,150	9,050	11,450	13,500	15,600	17,250	18,050
Elevator-structure	12,600	14,650	18,550				
Missoula, Mont.:							
Detached and semidetached	8,050	9,650	11,950	14,200	17,100	19,050	19,950
Row dwellings	7,650	9,150	11,350	13,550	16,300	18,100	18,950
Walk-up	6,850	8,650	10,900	12,850	14,900	16,450	17,200
Elevator-structure	12,050	13,950	17,700				
Superior, Mont.:							
Detached and semidetached	8,050	9,650	11,950	14,200	17,100	19,050	19,950
Row dwellings	7,650	9,150	11,350	13,550	16,300	18,100	18,950
Walk-up	6,850	8,650	10,900	12,850	14,900	16,450	17,200
Elevator-structure	12,050	13,950	17,700				
Browning, Mont.:							
Detached and semidetached	9,200	11,050	13,650	16,250	19,550	21,800	22,800
Row dwellings	8,750	10,500	13,000	15,450	18,650	20,700	21,700
Walk-up	7,800	9,850	12,500	14,700	17,000	18,800	19,700
Elevator-structure	13,750	15,950	20,250				
Harlem, Mont.:							
Detached and semidetached	9,200	11,050	13,650	16,250	19,550	21,800	22,800
Row dwellings	8,750	10,500	13,000	15,450	18,650	20,700	21,700
Walk-up	7,800	9,850	12,500	14,700	17,000	18,800	19,700
Elevator-structure	13,750	15,950	20,250				
Wolf Point, Mont.:							
Detached and semidetached	9,200	11,050	13,650	16,250	19,550	21,800	22,800
Row dwellings	8,750	10,500	13,000	15,450	18,650	20,700	21,700
Walk-up	7,800	9,850	12,500	14,700	17,000	18,800	19,700
Elevator-structure	13,750	15,950	20,250				
Lodge Grass, Mont.:							
Detached and semidetached	9,200	11,050	13,650	16,250	19,550	21,800	22,800
Row dwellings	8,750	10,500	13,000	15,450	18,650	20,700	21,700
Walk-up	7,800	9,850	12,500	14,700	17,000	18,800	19,700
Elevator-structure	13,750	15,950	20,250				
Casper, Wyo.:							
Detached and semidetached	7,950	9,600	11,850	14,100	17,000	18,900	19,800
Row dwellings	7,600	9,100	11,300	13,450	16,150	18,000	18,800
Walk-up	7,100	8,900	11,300	13,300	15,450	17,050	17,800
Elevator-structure	11,850	13,800	17,450				
Cheyenne, Wyo.:							
Detached and semidetached	7,600	9,100	11,200	13,300	16,050	17,850	18,700
Row dwellings	7,200	8,600	10,700	12,700	15,250	17,000	17,800
Walk-up	6,700	8,400	10,700	12,650	14,600	16,100	16,850
Elevator-structure	11,200	13,050	16,500				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VIII—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Cody, Wyo.:							
Detached and semidetached	7,700	9,250	11,450	13,600	16,400	18,250	19,100
Row dwellings	7,350	8,800	10,900	13,000	15,600	17,400	18,150
Walk-up	6,850	8,600	10,900	12,850	14,900	16,450	17,200
Elevator-structure	11,450	13,300	16,350				
Gillette, Wyo.:							
Detached and semidetached	8,200	9,900	12,250	14,550	17,550	19,550	20,450
Row dwellings	7,850	9,400	11,700	13,900	16,700	18,600	19,450
Walk-up	7,350	9,200	11,700	13,750	15,950	17,600	18,400
Elevator-structure	12,250	14,150	18,050				
Jackson, Wyo.:							
Detached and semidetached	7,900	9,500	11,750	14,000	16,850	18,750	19,650
Row dwellings	7,550	9,000	11,200	13,350	16,000	17,850	18,650
Walk-up	7,050	8,800	11,200	13,200	15,300	16,900	17,650
Elevator-structure	11,750	13,700	17,300				
Laramie, Wyo.:							
Detached and semidetached	7,600	9,200	11,350	13,500	16,300	18,100	19,000
Row dwellings	7,300	8,700	10,850	12,900	15,500	17,250	18,000
Walk-up	6,800	8,550	10,850	12,750	14,800	16,350	17,050
Elevator-structure	11,350	13,200	16,700				
Powell, Wyo.:							
Detached and semidetached	7,700	9,250	11,450	13,600	16,400	18,250	19,100
Row dwellings	7,350	8,800	10,900	13,000	15,600	17,400	18,150
Walk-up	6,850	8,600	10,900	12,850	14,900	16,450	17,200
Elevator-structure	11,450	13,300	16,350				
Riverton, Wyo.:							
Detached and semidetached	8,200	9,900	12,250	14,550	17,550	19,550	20,450
Row dwellings	7,850	9,400	11,700	13,900	16,700	18,600	19,450
Walk-up	7,350	9,200	11,700	13,750	15,950	17,600	18,400
Elevator-structure	12,250	14,150	18,050				
Rock Springs, Wyo.:							
Detached and semidetached	7,700	9,250	11,450	13,600	16,400	18,250	19,100
Row dwellings	7,350	8,800	10,900	13,000	15,600	17,400	18,150
Walk-up	6,850	8,600	10,900	12,850	14,900	16,450	17,200
Elevator-structure	11,450	13,300	16,350				
Salt Lake City, Utah:							
Detached and semidetached	8,250	9,950	12,300	14,650	17,650	19,650	20,550
Row dwellings	7,900	9,500	11,700	13,950	16,800	18,650	19,550
Walk-up	7,300	9,150	11,650	13,700	15,900	17,500	18,400
Elevator-structure	12,250	14,250	18,050				
Cedar City, Utah:							
Detached and semidetached	10,700	12,950	16,000	19,050	22,950	25,550	26,700
Row dwellings	10,250	12,350	15,200	18,100	21,800	24,250	25,400
Walk-up	8,700	10,900	13,850	16,300	18,900	20,850	21,900
Elevator-structure	15,000	18,100	22,950				
Logan, Utah:							
Detached and semidetached	8,400	10,150	12,500	14,900	17,950	20,000	20,900
Row dwellings	8,050	9,650	11,900	14,200	17,100	19,000	19,900
Walk-up	7,450	9,000	11,850	13,950	16,200	17,800	18,750
Elevator-structure	12,450	14,900	18,850				
Moab, Utah:							
Detached and semidetached	8,850	10,600	12,750	15,200	18,300	20,350	21,300
Row dwellings	8,500	9,850	12,100	14,450	17,450	19,500	20,350
Walk-up	7,850	9,500	12,050	14,200	16,450	18,150	19,050
Elevator-structure	12,700	14,750	18,700				
Provo, Utah:							
Detached and semidetached	8,250	9,950	12,300	14,650	17,650	19,650	20,550
Row dwellings	7,900	9,500	11,700	13,950	16,800	18,650	19,550
Walk-up	7,300	9,150	11,650	13,700	15,900	17,500	18,400
Elevator-structure	12,250	14,250	18,050				
Vernal, Utah:							
Detached and semidetached	8,500	10,250	12,700	15,150	18,200	20,300	21,200
Row dwellings	8,150	9,800	12,100	14,400	17,350	19,350	20,200
Walk-up	7,550	9,450	12,050	14,150	16,400	18,050	19,000
Elevator-structure	12,650	14,700	18,650				
Fargo, N. Dak.:							
Detached and semidetached	8,250	9,900	12,200	14,650	17,600	19,650	20,500
Row dwellings	7,850	9,450	11,650	13,900	16,750	18,600	19,450
Walk-up	7,100	8,900	11,200	13,300	15,400	16,950	17,800
Elevator-structure	10,850	12,650	15,950				

PROTOTYPE PER UNIT COST SCHEDULE

REGION VIII—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Bismarck, N. Dak.:							
Detached and semidetached	8,450	10,150	12,500	15,000	18,050	20,050	21,000
Row dwellings	8,050	9,700	11,950	14,250	17,150	19,050	19,950
Walk-up	7,300	9,100	11,600	13,650	15,800	17,350	18,250
Elevator-structure	11,100	12,950	16,350				
Dickinson, N. Dak.:							
Detached and semidetached	8,100	9,750	12,000	14,400	17,300	19,250	20,150
Row dwellings	7,700	9,300	11,450	13,650	16,450	18,300	19,150
Walk-up	7,000	8,750	11,000	13,100	15,150	16,950	17,800
Elevator-structure	10,650	12,450	15,700				
Grand Forks, N. Dak.:							
Detached and semidetached	8,100	9,750	12,000	14,400	17,300	19,250	20,150
Row dwellings	7,700	9,300	11,450	13,650	16,450	18,300	19,150
Walk-up	7,000	8,750	11,000	13,100	15,150	16,950	17,800
Elevator-structure	10,650	12,450	15,700				
Minot, N. Dak.:							
Detached and semidetached	8,050	9,650	11,900	14,300	17,150	19,050	20,000
Row dwellings	7,650	9,200	11,350	13,550	16,350	18,150	18,950
Walk-up	6,900	8,700	10,900	12,950	15,000	16,550	17,350
Elevator-structure	10,600	12,350	15,550				
Sioux Falls, S. Dak.:							
Detached and semidetached	8,000	9,650	11,900	14,150	17,050	19,000	19,850
Row dwellings	7,600	9,150	11,350	13,500	16,250	18,050	18,900
Walk-up	6,850	8,350	10,650	12,600	14,500	16,050	16,800
Elevator-structure	10,050	12,750	16,100				
Aberdeen, S. Dak.:							
Detached and semidetached	8,050	9,700	11,950	14,200	17,150	19,100	19,950
Row dwellings	7,650	9,200	11,400	13,550	16,350	18,100	18,900
Walk-up	6,700	8,400	10,600	12,550	14,550	16,050	16,900
Elevator-structure	11,000	12,800	16,200				
Black Hills, S. Dak.:							
Detached and semidetached	8,000	9,650	11,900	14,150	17,050	19,000	19,850
Row dwellings	7,600	9,150	11,350	13,500	16,250	18,050	18,900
Walk-up	6,650	8,350	10,650	12,600	14,500	16,050	16,800
Elevator-structure	10,050	12,750	16,100				
Mitchell, S. Dak.:							
Detached and semidetached	8,000	9,650	11,900	14,150	17,050	19,000	19,850
Row dwellings	7,600	9,150	11,350	13,500	16,250	18,050	18,900
Walk-up	6,650	8,350	10,650	12,600	14,500	16,050	16,800
Elevator-structure	10,050	12,750	16,100				
Pierre, S. Dak.:							
Detached and semidetached	8,600	10,300	12,600	15,000	18,100	20,150	21,050
Row dwellings	8,050	9,650	12,050	14,300	17,250	19,100	20,050
Walk-up	6,850	8,600	10,900	12,900	14,950	16,450	17,350
Elevator-structure	11,850	13,800	17,450				
Rapid City, S. Dak.:							
Detached and semidetached	8,100	9,800	12,050	14,350	17,250	19,250	20,100
Row dwellings	7,700	9,250	11,500	13,700	16,450	18,250	19,100
Walk-up	6,700	8,400	10,600	12,650	14,650	16,200	16,950
Elevator-structure	11,600	13,500	16,150				
Pine Ridge, S. Dak.:							
Detached and semidetached	9,450	11,400	14,050	16,700	20,100	22,400	23,400
Row dwellings	8,950	10,800	13,400	15,950	19,200	21,250	22,300
Walk-up	7,850	9,850	12,450	14,750	17,100	18,800	19,800
Elevator-structure	12,000	15,050	19,000				
Winner, S. Dak.:							
Detached and semidetached	9,450	11,400	14,050	16,700	20,100	22,400	23,400
Row dwellings	8,950	10,800	13,400	15,950	19,200	21,250	22,300
Walk-up	7,850	9,850	12,450	14,750	17,100	18,800	19,800
Elevator-structure	12,000	15,050	19,000				
Stephan, S. Dak.:							
Detached and semidetached	9,450	11,400	14,050	16,700	20,100	22,400	23,400
Row dwellings	8,950	10,800	13,400	15,950	19,200	21,250	22,300
Walk-up	7,850	9,850	12,450	14,750	17,100	18,800	19,800
Elevator-structure	12,000	15,050	19,000				
Isabel, S. Dak.:							
Detached and semidetached	9,450	11,400	14,050	16,700	20,100	22,400	23,400
Row dwellings	8,950	10,800	13,400	15,950	19,200	21,250	22,300
Walk-up	7,850	9,850	12,450	14,750	17,100	18,800	19,800
Elevator-structure	12,000	15,050	19,000				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IX

	Number of bedrooms						
	0	1	2	3	4	5	6
Phoenix, Ariz.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,800	19,850	20,700
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,350	14,350	18,150				
Casa Grande, Ariz.:							
Detached and semidetached	8,700	10,450	12,950	15,400	18,500	20,650	21,600
Row dwellings	8,250	10,000	12,300	14,650	17,600	19,650	20,550
Walk-up	7,050	8,850	11,200	13,200	15,300	16,850	17,650
Elevator-structure	12,600	14,600	18,500				
Douglas, Ariz.:							
Detached and semidetached	8,600	10,350	12,850	15,250	18,350	20,500	21,450
Row dwellings	8,200	9,900	12,200	14,550	17,500	19,500	20,350
Walk-up	7,000	8,750	11,100	13,100	15,150	16,700	17,550
Elevator-structure	12,600	14,500	18,350				
Flagstaff, Ariz.:							
Detached and semidetached	8,600	10,350	12,800	15,200	18,300	20,400	21,400
Row dwellings	8,200	9,850	12,200	14,500	17,450	19,450	20,300
Walk-up	7,000	8,750	11,050	13,050	15,100	16,650	17,500
Elevator-structure	13,200	15,300	19,350				
Kingman, Ariz.:							
Detached and semidetached	8,700	10,450	12,950	15,400	18,500	20,650	21,600
Row dwellings	8,250	10,000	12,300	14,650	17,600	19,650	20,550
Walk-up	7,050	8,850	11,200	13,200	15,300	16,850	17,650
Elevator-structure	12,600	14,600	18,500				
Safford, Ariz.:							
Detached and semidetached	8,800	10,600	13,100	15,600	18,750	20,900	21,900
Row dwellings	8,400	10,100	12,500	14,850	17,850	19,900	20,800
Walk-up	7,150	8,950	11,350	13,400	15,600	17,050	17,900
Elevator-structure	12,650	14,700	18,600				
Tucson, Ariz.:							
Detached and semidetached	8,850	10,650	13,200	15,700	18,850	21,050	22,050
Row dwellings	8,450	10,200	12,550	14,950	17,950	20,050	20,950
Walk-up	7,200	9,000	11,400	13,450	15,550	17,150	18,000
Elevator-structure	11,900	13,850	17,500				
Yuma, Ariz.:							
Detached and semidetached	8,850	10,650	13,200	15,700	18,850	21,050	22,050
Row dwellings	8,450	10,200	12,550	14,950	17,950	20,050	20,950
Walk-up	7,200	9,000	11,400	13,450	15,550	17,150	18,000
Elevator-structure	12,600	14,650	18,500				
Los Angeles, Calif.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,800	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,350	14,350	18,150				
Bakersfield, Calif.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,850	19,900	20,800
Row dwellings	7,950	9,600	11,850	14,100	17,000	18,950	19,800
Walk-up	6,800	8,500	10,750	12,700	14,700	16,250	17,050
Elevator-structure	12,350	14,350	18,200				
Bishop, Calif.:							
Detached and semidetached	8,700	10,450	12,950	15,400	18,500	20,650	21,600
Row dwellings	8,250	10,000	12,300	14,650	17,650	19,650	20,550
Walk-up	7,050	8,850	11,200	13,200	15,300	16,850	17,700
Elevator-structure	12,850	14,900	18,900				
Invokner, Calif.:							
Detached and semidetached	8,650	10,400	12,900	15,300	18,400	20,550	21,500
Row dwellings	8,250	9,950	12,250	14,600	17,550	19,550	20,450
Walk-up	7,050	8,800	11,150	13,150	15,200	16,750	17,600
Elevator-structure	12,800	14,850	18,800				
Lancaster, Calif.:							
Detached and semidetached	8,450	10,150	12,550	14,950	18,000	20,050	21,000
Row dwellings	8,050	9,700	11,950	14,250	17,100	19,100	19,950
Walk-up	6,850	8,600	10,850	12,850	14,850	16,350	17,150
Elevator-structure	12,450	14,500	18,350				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IX—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Mojave, Calif.:							
Detached and semidetached	8,600	10,350	12,800	15,250	18,350	20,450	21,400
Row dwellings	8,200	10,000	12,200	14,500	17,450	19,450	20,350
Walk-up	7,000	8,750	11,050	13,100	15,150	16,700	17,500
Elevator-structure	12,700	14,800	18,700				
Ojai, Calif.:							
Detached and semidetached	7,950	9,600	11,900	14,100	17,000	18,950	19,850
Row dwellings	7,600	9,150	11,300	13,450	16,150	18,050	18,850
Walk-up	6,500	8,100	10,250	12,100	14,000	15,450	18,850
Elevator-structure	11,800	13,700	17,300				
Oxnard, Calif.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,800	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,350	14,350	18,150				
Paso Robles, Calif.:							
Detached and semidetached	8,600	10,350	12,800	15,250	18,350	20,450	21,400
Row dwellings	8,200	10,000	12,200	14,500	17,450	19,450	20,350
Walk-up	7,000	8,750	11,050	13,100	15,150	16,700	17,500
Elevator-structure	12,700	14,800	18,700				
Piru, Calif.:							
Detached and semidetached	7,950	9,600	11,900	14,100	17,000	18,950	19,850
Row dwellings	7,600	9,150	11,300	13,450	16,150	18,050	18,850
Walk-up	6,500	8,100	10,250	12,100	14,000	15,450	16,200
Elevator-structure	11,800	13,700	17,300				
Ridgecrest, Calif.:							
Detached and semidetached	8,650	10,400	12,900	15,300	18,400	20,550	21,500
Row dwellings	8,250	9,950	12,250	14,600	17,550	19,550	20,450
Walk-up	7,050	8,800	11,150	13,150	15,200	16,750	17,600
Elevator-structure	12,800	14,850	18,800				
San Bernardino, Calif.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,800	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,350	14,350	18,150				
Santa Barbara, Calif.:							
Detached and semidetached	8,450	10,150	12,550	14,950	18,000	20,050	21,000
Row dwellings	8,050	9,700	11,950	14,250	17,100	19,100	19,950
Walk-up	6,850	8,600	10,850	12,850	14,850	16,350	17,150
Elevator-structure	12,450	14,500	18,350				
Santa Maria, Calif.:							
Detached and semidetached	8,600	10,350	12,800	15,250	18,350	20,450	21,400
Row dwellings	8,200	10,000	12,200	14,500	17,450	19,450	20,350
Walk-up	7,000	8,750	11,050	13,100	15,150	16,700	17,500
Elevator-structure	12,700	14,800	18,700				
Tehachapi, Calif.:							
Detached and semidetached	8,600	10,350	12,800	15,250	18,350	20,450	21,400
Row dwellings	8,200	10,000	12,200	14,500	17,450	19,450	20,350
Walk-up	7,000	8,750	11,050	13,100	15,150	16,700	17,500
Elevator-structure	12,700	14,800	18,700				
Ventura, Calif.:							
Detached and semidetached	8,350	10,050	12,450	14,800	17,800	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,100	16,950	18,900	19,750
Walk-up	6,800	8,500	10,750	12,700	14,700	16,200	17,000
Elevator-structure	12,350	14,350	18,150				
Sacramento, Calif.:							
Detached and semidetached	9,100	10,950	13,550	16,100	19,400	21,600	22,550
Row dwellings	8,650	10,450	12,900	15,300	18,450	20,550	21,500
Walk-up	7,400	9,250	11,750	13,800	16,000	17,650	18,500
Elevator-structure	13,350	15,500	19,600				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IX—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Chico, Calif.:							
Detached and semidetached	9,200	11,050	13,700	16,300	19,000	21,850	22,800
Row dwellings	8,750	10,550	13,050	15,500	18,050	20,750	21,750
Walk-up	7,500	9,350	11,850	13,050	16,150	17,850	18,700
Elevator-structure	13,500	15,050	19,800				
Davis, Calif.:							
Detached and semidetached	9,250	11,150	13,800	16,400	19,750	22,000	22,050
Row dwellings	8,800	10,050	13,150	15,600	18,750	10,000	21,000
Walk-up	7,550	9,400	11,900	14,050	16,300	17,050	18,800
Elevator-structure	13,000	15,750	19,950				
Placerville, Calif.:							
Detached and semidetached	9,350	11,250	13,950	16,550	19,950	22,200	23,200
Row dwellings	8,900	10,750	13,250	15,800	18,950	21,150	22,100
Walk-up	7,600	9,500	12,050	14,200	16,450	18,150	19,000
Elevator-structure	13,700	15,950	20,150				
Redding, Calif.:							
Detached and semidetached	9,350	11,250	13,950	16,550	19,950	22,200	23,200
Row dwellings	8,900	10,750	13,250	15,800	18,950	21,150	22,100
Walk-up	7,600	9,500	12,050	14,200	16,45	18,150	19,000
Elevator-structure	13,700	15,950	20,150				
Stockton, Calif.:							
Detached and semidetached	9,100	10,950	13,550	16,100	19,400	21,600	22,550
Row dwellings	8,650	10,450	12,900	15,350	18,450	20,550	21,500
Walk-up	7,400	9,250	11,700	13,500	16,000	17,650	18,500
Elevator-structure	13,350	15,500	19,600				
Yreka, Calif.:							
Detached and semidetached	9,400	11,350	14,000	16,650	20,100	22,350	23,350
Row dwellings	8,950	10,800	13,350	15,900	19,100	21,250	22,250
Walk-up	7,650	9,550	12,100	14,300	16,650	18,250	19,100
Elevator-structure	13,500	16,050	20,200				
San Diego, Calif.:							
Detached and semidetached	8,300	9,950	12,350	14,700	17,950	19,950	20,850
Row dwellings	7,900	9,500	11,750	14,000	16,800	18,750	19,600
Walk-up	6,750	8,400	10,700	12,600	14,600	16,050	16,850
Elevator-structure	12,350	14,250	18,150				
El Cajon, Calif.:							
Detached and semidetached	8,300	9,950	12,350	14,700	17,950	19,950	20,850
Row dwellings	7,900	9,500	11,750	14,000	16,800	18,750	19,600
Walk-up	6,750	8,400	10,700	12,600	14,600	16,050	16,850
Elevator-structure	12,350	14,250	18,150				
San Francisco, Calif.:							
Detached and semidetached	9,900	11,200	13,850	16,500	19,850	22,100	23,100
Row dwellings	8,850	10,700	13,200	15,700	18,900	21,050	22,000
Walk-up	7,600	9,450	12,000	14,150	16,400	18,050	18,950
Elevator-structure	13,650	15,850	20,050				
Fresno, Calif.:							
Detached and semidetached	9,000	10,850	13,400	16,000	19,250	21,400	22,350
Row dwellings	8,550	10,350	12,800	15,200	18,300	20,400	21,300
Walk-up	7,300	9,150	11,600	13,700	15,900	17,500	18,350
Elevator-structure	12,900	15,000	19,000				
Modesto, Calif.:							
Detached and semidetached	8,950	10,800	13,350	15,900	19,150	21,300	22,250
Row dwellings	8,550	10,300	12,700	15,150	18,200	20,300	21,200
Walk-up	7,300	9,100	11,550	13,650	15,850	17,400	18,250
Elevator-structure	12,850	14,850	18,800				
San Jose, Calif.:							
Detached and semidetached	9,900	11,200	13,850	16,500	19,850	22,100	23,100
Row dwellings	8,850	10,700	13,200	15,700	18,900	21,050	22,000
Walk-up	7,600	9,450	12,000	14,150	16,400	18,050	18,950
Elevator-structure	13,650	15,850	20,050				
San Rafael, Calif.:							
Detached and semidetached	9,550	11,500	14,200	16,950	20,350	22,650	23,700
Row dwellings	9,100	11,000	13,550	16,100	19,400	21,600	22,600
Walk-up	7,800	9,700	12,300	14,500	16,800	18,500	19,450
Elevator-structure	14,000	16,250	20,550				
Santa Ana, Calif.:							
Detached and semidetached	8,600	10,350	12,800	15,300	18,350	20,450	21,400
Row dwellings	8,200	9,900	12,200	14,650	17,600	19,500	20,350
Walk-up	7,050	8,750	11,100	13,100	15,200	17,700	17,550
Elevator-structure	12,000	15,000	19,000				

PROTOTYPE PER UNIT COST SCHEDULE

REGION IX—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Arrowhead, Calif.:							
Detached and semidetached	9,000	10,850	13,400	16,050	19,250	21,450	22,400
Row dwellings	8,600	10,350	12,800	15,250	18,350	20,450	21,300
Walk-up	7,400	9,150	11,650	13,700	15,950	17,500	18,400
Elevator-structure	13,500	15,700	19,900				
Barstow, Calif.:							
Detached and semidetached	8,850	10,650	13,150	15,750	18,850	21,000	22,000
Row dwellings	8,450	10,200	12,650	14,950	18,000	20,050	20,900
Walk-up	7,250	9,000	11,400	13,450	15,650	17,150	18,050
Elevator-structure	13,250	15,400	19,650				
Big Bear, Calif.:							
Detached and semidetached	9,000	10,850	13,400	16,050	19,250	21,450	22,400
Row dwellings	8,600	10,350	12,800	15,250	18,350	20,450	21,300
Walk-up	7,400	9,150	11,650	13,700	15,950	17,500	18,400
Elevator-structure	13,500	15,700	19,900				
Desert Center, Calif.:							
Detached and semidetached	8,750	10,550	13,050	15,600	18,700	20,850	21,800
Row dwellings	8,350	10,100	12,450	14,850	17,850	19,850	20,750
Walk-up	7,200	8,900	11,300	13,350	15,500	17,000	17,900
Elevator-structure	13,150	15,300	19,350				
Needles, Calif.:							
Detached and semidetached	8,850	10,650	13,150	15,750	18,850	21,000	22,000
Row dwellings	8,450	10,200	12,650	14,950	18,000	20,050	20,900
Walk-up	7,250	9,000	11,400	13,450	15,650	17,150	18,050
Elevator-structure	13,250	15,400	19,650				
Victorville, Calif.:							
Detached and semidetached	8,850	10,650	13,150	15,750	18,850	21,000	22,000
Row dwellings	8,450	10,200	12,650	14,950	18,000	20,050	20,900
Walk-up	7,250	9,000	11,400	13,450	15,650	17,150	18,050
Elevator-structure	13,250	15,400	19,650				
Honolulu, Hawaii:							
Detached and semidetached	10,300	12,450	15,350	18,300	22,050	24,500	25,650
Row dwellings	9,800	11,850	14,650	17,400	20,950	23,350	24,400
Walk-up	8,450	10,500	13,300	15,700	18,200	20,050	21,050
Elevator-structure	13,300	15,450	19,650				
Guam:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,200	22,450	23,500
Row dwellings	8,950	10,850	13,400	15,950	19,200	21,350	22,350
Walk-up	7,750	9,600	12,100	14,350	16,950	18,350	19,250
Elevator-structure	12,150	14,150	17,950				
Hilo:							
Detached and semidetached	11,350	13,700	16,950	20,150	24,250	26,950	28,200
Row dwellings	10,500	12,650	15,700	19,150	23,050	25,700	26,850
Walk-up	9,300	11,550	14,350	17,250	20,900	22,950	23,150
Elevator-structure	14,650	16,700	21,000				
Kauai:							
Detached and semidetached	11,550	14,000	17,250	20,550	24,750	27,500	28,600
Row dwellings	11,000	13,300	16,450	19,650	23,650	26,200	27,400
Walk-up	9,500	11,800	14,650	17,650	20,450	22,500	23,650
Elevator-structure	14,950	17,350	21,950				
Reno:							
Detached and semidetached	11,550	14,000	17,250	20,550	24,750	27,500	28,600
Row dwellings	11,000	13,300	16,450	19,650	23,650	26,200	27,400
Walk-up	9,500	11,800	14,650	17,650	20,450	22,500	23,650
Elevator-structure	14,950	17,350	21,950				
Maui:							
Detached and semidetached	11,250	13,600	16,750	20,000	24,100	26,750	27,900
Row dwellings	10,700	12,950	16,000	19,100	22,900	25,500	26,650
Walk-up	9,250	11,450	14,250	17,150	19,900	21,900	23,050
Elevator-structure	14,550	16,900	21,350				
Reno, Nev.:							
Detached and semidetached	8,050	9,950	11,950	14,250	17,150	19,100	19,950
Row dwellings	7,650	9,250	11,100	13,250	16,000	18,200	19,000
Walk-up	6,650	8,150	10,350	12,200	14,150	15,900	16,350
Elevator-structure	12,900	15,000	18,050				
Las Vegas, Nev.:							
Detached and semidetached	8,200	9,850	12,200	14,500	17,500	19,450	20,350
Row dwellings	7,800	9,450	11,600	13,800	16,600	18,550	19,350
Walk-up	6,700	8,300	10,550	12,450	14,400	15,900	16,650
Elevator-structure	13,050	15,150	19,150				

PROTOTYPE PER UNIT COST SCHEDULE

REGION X

	Number of bedrooms						
	0	1	2	3	4	5	6
Seattle, Wash.:							
Detached and semidetached	8,750	10,600	13,050	15,600	18,750	20,850	21,850
Row dwellings	8,350	10,100	12,450	14,800	17,850	19,850	20,750
Walk-up	7,150	8,900	11,300	13,350	15,450	17,050	17,900
Elevator-structure	11,600	13,500	17,050				
Calallam, Wash.:							
Detached and semidetached	9,000	10,850	13,400	16,000	19,250	21,400	22,400
Row dwellings	8,550	10,350	12,750	15,200	18,300	20,350	21,300
Walk-up	7,350	9,150	11,600	13,700	15,850	17,500	18,350
Elevator-structure	11,900	13,800	17,500				
Ellensburg, Wash.:							
Detached and semidetached	9,200	11,150	13,700	16,400	19,700	21,950	23,000
Row dwellings	8,900	10,600	13,100	15,550	18,750	20,900	21,800
Walk-up	7,500	9,350	11,900	14,050	16,250	17,950	18,850
Elevator-structure	12,200	14,200	17,950				
Kelso, Wash.:							
Detached and semidetached	9,050	10,950	13,500	16,150	19,400	21,550	22,600
Row dwellings	8,650	10,450	12,900	15,300	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,650	18,500
Elevator-structure	12,000	13,950	17,650				
Kitsap, Wash.:							
Detached and semidetached	9,000	10,850	13,400	16,000	19,250	21,400	22,400
Row dwellings	8,550	10,350	12,750	15,200	18,300	20,350	21,300
Walk-up	7,350	9,150	11,600	13,700	15,850	17,500	18,350
Elevator-structure	11,900	13,850	17,500				
Longview, Wash.:							
Detached and semidetached	9,050	10,950	13,500	16,150	19,400	21,550	22,600
Row dwellings	8,650	10,450	12,900	15,300	18,450	20,550	21,450
Walk-up	7,400	9,200	11,700	13,800	16,000	17,650	18,500
Elevator-structure	12,000	13,950	17,650				
Mason, Wash.:							
Detached and semidetached	8,850	10,700	13,150	15,750	19,000	21,050	22,050
Row dwellings	8,400	10,200	12,550	14,950	18,000	20,000	20,950
Walk-up	7,200	9,000	11,400	13,450	15,600	17,200	18,050
Elevator-structure	11,700	13,600	17,200				
Skagit Island, Wash.:							
Detached and semidetached	8,850	10,700	13,150	15,750	19,000	21,050	22,050
Row dwellings	8,400	10,200	12,550	14,950	18,000	20,000	20,950
Walk-up	7,200	9,000	11,400	13,450	15,600	17,200	18,050
Elevator-structure	11,700	13,600	17,200				
Thurston, Wash.:							
Detached and semidetached	8,850	10,700	13,150	15,750	19,000	21,050	22,050
Row dwellings	8,400	10,200	12,550	14,950	18,000	20,000	20,950
Walk-up	7,200	9,000	11,400	13,450	15,600	17,200	18,050
Elevator-structure	11,700	13,600	17,200				
Yakima, Wash.:							
Detached and semidetached	9,200	11,150	13,700	16,400	19,700	21,950	23,000
Row dwellings	8,900	10,600	13,100	15,550	18,750	20,900	21,800
Walk-up	7,500	9,350	11,900	14,050	16,250	17,950	18,850
Elevator-structure	12,200	14,200	17,950				
Anchorage, Alaska:							
Detached and semidetached	11,650	14,100	17,350	20,750	24,900	27,700	29,050
Row dwellings	11,100	13,400	16,550	19,650	23,750	26,400	27,600
Walk-up	9,500	11,850	15,000	17,750	20,550	22,650	23,550
Elevator-structure	15,900	18,500	23,400				
Fairbanks, Alaska:							
Detached and semidetached	12,400	15,000	18,500	22,100	26,550	29,500	30,950
Row dwellings	11,850	14,300	17,650	20,950	25,300	28,150	29,400
Walk-up	10,100	12,600	16,000	18,900	21,900	24,150	25,350
Elevator-structure	16,850	19,600	24,750				
Juneau, Alaska:							
Detached and semidetached	12,350	14,950	18,350	21,950	26,350	29,350	30,750
Row dwellings	11,750	14,200	17,500	20,800	25,100	27,950	29,200
Walk-up	10,050	12,500	15,900	18,800	21,750	24,000	25,200
Elevator-structure	16,000	18,950	23,950				
Kenai, Alaska:							
Detached and semidetached	12,350	14,950	18,400	22,000	26,400	29,350	30,850
Row dwellings	11,750	14,200	17,550	20,850	25,150	27,950	29,250
Walk-up	10,050	12,550	15,900	18,800	21,750	24,000	25,200
Elevator-structure	16,000	18,950	23,900				
Ketchikan, Alaska:							
Detached and semidetached	12,400	15,000	18,450	22,050	26,450	29,450	30,850
Row dwellings	11,800	14,250	17,600	20,900	25,200	28,050	29,350
Walk-up	10,100	12,600	15,950	18,850	21,850	24,050	25,300
Elevator-structure	16,450	19,150	24,200				

PROTOTYPE PER UNIT COST SCHEDULE

REGION X—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Kodiak, Alaska:							
Detached and semidetached	12,400	15,000	18,450	22,050	26,500	29,450	30,900
Row dwellings	11,800	14,250	17,600	20,900	25,250	28,050	29,350
Walk-up	10,100	12,600	15,950	18,900	21,850	24,050	25,300
Elevator-structure	16,550	19,250	24,350				
Sitka, Alaska:							
Detached and semidetached	12,500	15,150	18,650	22,300	26,750	29,750	31,200
Row dwellings	11,950	14,400	17,800	21,100	25,500	28,350	29,650
Walk-up	10,200	12,750	16,100	19,050	22,100	24,350	25,550
Elevator-structure	16,950	19,700	24,950				
Boise, Idaho:							
Detached and semidetached	8,000	9,700	11,950	14,300	17,200	19,100	20,050
Row dwellings	7,650	9,250	11,400	13,650	16,350	18,200	19,050
Walk-up	6,550	8,150	10,350	12,250	14,150	15,650	16,400
Elevator-structure	10,400	12,100	15,300				
Idaho Falls, Idaho:							
Detached and semidetached	8,300	10,050	12,400	14,850	17,850	19,850	20,800
Row dwellings	7,950	9,600	11,850	14,050	16,950	18,900	19,800
Walk-up	6,800	8,450	10,700	12,700	14,700	16,250	17,000
Elevator-structure	10,800	12,550	15,900				
McCall, Idaho:							
Detached and semidetached	8,400	10,150	12,500	15,000	18,000	20,000	21,000
Row dwellings	8,000	9,700	11,950	14,200	17,150	19,050	20,000
Walk-up	6,850	8,550	10,850	12,850	14,800	16,400	17,200
Elevator-structure	10,900	12,650	16,050				
Pocatello, Idaho:							
Detached and semidetached	8,850	10,700	13,200	15,800	19,000	21,100	22,150
Row dwellings	8,450	10,200	12,600	15,000	18,050	20,100	21,050
Walk-up	7,250	9,000	11,450	13,550	15,650	17,300	18,100
Elevator-structure	11,500	13,350	16,900				
Twin Falls, Idaho:							
Detached and semidetached	8,750	10,600	13,100	15,650	18,850	20,900	21,950
Row dwellings	8,400	10,150	12,500	14,850	17,900	19,950	20,850
Walk-up	7,150	8,950	11,350	13,400	15,500	17,150	17,950
Elevator-structure	11,400	13,250	16,750				
Ontario, Oreg.:							
Detached and semidetached	8,400	10,150	12,500	15,000	18,000	20,000	21,000
Row dwellings	8,000	9,700	11,950	14,200	17,150	19,050	20,000
Walk-up	6,850	8,550	10,850	12,850	14,800	16,400	17,200
Elevator-structure	10,900	12,650	16,050				
Portland, Oreg.:							
Detached and semidetached	8,400	10,150	12,500	15,000	18,000	20,000	20,950
Row dwellings	8,000	9,700	12,000	14,200	17,150	19,050	19,900
Walk-up	6,850	8,550	10,850	12,800	14,850	16,350	17,200
Elevator-structure	11,000	12,800	16,150				
Bend, Oreg.:							
Detached and semidetached	8,400	10,150	12,500	15,000	18,000	20,000	20,950
Row dwellings	8,000	9,700	12,000	14,200	17,150	19,050	19,900
Walk-up	6,850	8,550	10,850	12,800	14,850	16,350	17,200
Elevator-structure	11,000	12,800	16,150				
Coos Bay, Oreg.:							
Detached and semidetached	8,600	10,400	12,850	15,400	18,450	20,550	21,500
Row dwellings	8,200	9,950	12,300	14,550	17,600	19,550	20,400
Walk-up	7,050	8,750	11,150	13,150	15,250	16,850	17,650
Elevator-structure	11,300	13,150	16,550				
Eugene, Oreg.:							
Detached and semidetached	8,250	9,950	12,250	14,700	17,650	19,600	20,550
Row dwellings	7,850	9,500	11,750	13,900	16,800	18,650	19,500
Walk-up	6,700	8,400	10,650	12,550	14,550	16,000	16,850
Elevator-structure	10,800	12,550	15,850				
Medford, Oreg.:							
Detached and semidetached	8,300	10,050	12,400	14,850	17,800	19,800	20,700
Row dwellings	7,900	9,600	11,900	14,050	17,000	18,850	19,700
Walk-up	6,800	8,450	10,700	12,650	14,700	16,200	17,050
Elevator-structure	10,950	12,650	16,000				
West Salem, Oreg.:							
Detached and semidetached	8,400	10,200	12,600	15,100	18,100	20,150	21,100
Row dwellings	8,000	9,750	12,100	14,300	17,250	19,200	20,050
Walk-up	6,900	8,600	10,900	12,900	14,850	16,450	17,300
Elevator-structure	11,050	12,900	16,200				

PROTOTYPE PER UNIT COST SCHEDULE
REGION X—Continued

	Number of bedrooms						
	0	1	2	3	4	5	6
Spokane, Wash.:							
Detached and semidetached	8,550	10,350	12,750	15,200	18,000	20,050	21,200
Row dwellings	8,150	9,850	12,150	14,450	17,400	19,250	20,250
Walk-up	7,000	8,700	11,050	13,050	15,100	16,650	17,450
Elevator-structure	11,150	13,000	16,400				
Cheney, Wash.:							
Detached and semidetached	8,650	10,500	12,900	15,400	18,250	20,650	21,900
Row dwellings	8,250	10,000	12,300	14,650	17,650	19,600	20,650
Walk-up	7,100	8,800	11,200	13,250	15,350	16,900	17,700
Elevator-structure	11,300	13,200	16,600				
Coeur d'Alene, Idaho:							
Detached and semidetached	8,600	10,400	12,850	15,300	18,100	20,500	21,450
Row dwellings	8,200	9,900	12,200	14,550	17,500	19,400	20,400
Walk-up	7,050	8,750	11,150	13,150	15,200	16,750	17,550
Elevator-structure	11,250	13,100	16,500				
Kennewick, Wash.:							
Detached and semidetached	9,300	11,250	13,900	16,550	20,000	22,150	23,200
Row dwellings	8,900	10,750	13,250	15,750	18,950	21,050	22,050
Walk-up	7,600	9,450	12,050	14,200	16,450	18,150	19,000
Elevator-structure	12,150	14,150	17,850				
Pullman, Wash.:							
Detached and semidetached	9,450	11,400	14,050	16,750	20,200	22,450	23,500
Row dwellings	9,000	10,850	13,400	15,950	19,200	21,350	22,350
Walk-up	7,700	9,600	12,200	14,400	16,650	18,350	19,250
Elevator-structure	12,300	14,350	18,100				
Lewiston, Idaho:							
Detached and semidetached	8,650	10,500	12,900	15,400	18,250	20,650	21,900
Row dwellings	8,250	10,000	12,300	14,650	17,650	19,600	20,650
Walk-up	7,100	8,800	11,200	13,250	15,350	16,900	17,700
Elevator-structure	11,300	13,200	16,600				

PART 277—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

Sec.
277.1 Definitions.
277.2 General policy.
277.3 Sponsorship.
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277.5 Loan applications.
277.6 Loan terms.
277.7 Loan agreement.
277.8 Regulatory agreement.
277.9 Other requirements.
277.10 Assistance to nonprofit organizations.
277.11 Refinancing.

AUTHORITY: The provisions of this Part 277 issued under sec. 102, 73 Stat. 667; 12 U.S.C. 1701q.

§ 277.1 Definitions.

As used in this part:

(a) All terms shall have the same meaning as given them in the Act.

(b) "Act" means title II of the Housing Act of 1959, as amended, 12 U.S.C. 1701q.

(c) "Applicant" means any nonprofit corporation no part of the net earnings of which inures to the benefit of any private shareholder, contributor, or individual, if such corporation is approved by the Secretary; any limited profit sponsor approved by the Secretary; any consumer cooperative; or any public body or agency eligible under section 202(a)(2) of the Act.

(d) "Construction" means erection of new structures or rehabilitation, alteration, conversion, or improvement of existing structures and includes acquisition of existing structures to be rehabilitated, altered, converted, or improved.

(e) "Development cost" means the costs of construction of housing and related facilities, and of land and necessary site improvements, and included preliminary development costs, architect and engineering costs, organizational and development costs, legal and administrative costs, and interest during construction and rent-up period.

(f) "Elderly or handicapped families" means families consisting of two or more persons, the head of which (or his spouse) is 62 years of age or over or is handicapped; and any single person who is 62 years of age or over or is handicapped.

(g) "Handicapped person" means any person having a physical impairment which is expected to be of long-continued and indefinite duration, substantially impedes his ability to live independently, and is of such nature that such ability could be improved by more suitable housing conditions.

(h) "Housing and related facilities" means structures suitable for dwelling use by elderly or handicapped families, and structures suitable for use as cafeterias or dining halls, community rooms or buildings, workshops, or infirmaries or other inpatient or outpatient health facilities, or other essential service facilities.

(i) "Secretary" means the Secretary of Housing and Urban Development or any officer authorized to perform the functions of the Secretary.

(j) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

§ 277.2 General policy.

The purpose of the program described in this part is to provide assistance for the development of rental housing projects, to serve elderly or handicapped families whose incomes are below those needed to pay the rentals in adequate private-market housing, through direct loans where private financing is not available on equally favorable terms and conditions. Project design, site selection, and financial arrangements must be consistent with the ultimate purpose of providing pleasant living arrangements at minimum rentals to promote independent living by elderly or handicapped families.

§ 277.3 Sponsorship.

An applicant either must be an established organization the purposes of which include promotion of the welfare of elderly or handicapped families or must be sponsored by a fraternal, civic, religious, charitable, or similar organization with long-term social and financial responsibility. The sponsor must be willing and able to maintain a continuing interest in and support of the project and its affairs during the life of the loan.

§ 277.4 Eligible projects.

Loan assistance to finance the construction of housing and related facilities for elderly or handicapped families may be provided under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Project design, site selection, and costs must provide access to community activities and services, and a pleasant environment.

(c) Nursing homes, hospitals, or similar medical establishments, and chapels or other facilities of a religious nature are not eligible for loan assistance.

(d) Customary leasing arrangements with periodic payments for rentals and collateral services must be provided; life-care contracts, founders' fees, or similar arrangements are not permissible.

(e) An eligible facility must be financially feasible and essential for the welfare of the project residents, and may include such facilities as project-management office space, project workshops and storage space, recreation and social centers, snack bars, craft shops, multipurpose rooms, laundry facilities, and cafeterias or dining halls. Commercial facilities, such as grocery stores, restaurants, beauty and barber shops, may be included if they are essential for the elderly or handicapped families in the project and are not otherwise conveniently available to them.

§ 277.5 Loan applications.

Information and application forms may be obtained from and applications submitted to the HUD Regional Office which serves the area in which the applicant or sponsoring organization is located. A list of HUD Regional Offices with their addresses and areas of jurisdiction appears at § 3.8 of this title. Prior to loan approval, an applicant must establish that:

(a) It has the necessary legal authority to finance, construct, and maintain the proposed facilities, to apply for and receive the proposed loan, and to provide such security as shall be required by the Secretary;

(b) It has the ability to comply with the terms and conditions for repayment of the loan and operation of the project; and

(c) It has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession, and operation of the facilities during the term of the loan.

§ 277.6 Loan terms.

Loans shall be repayable within such period, not to exceed 50 years, shall bear interest at such rate, not to exceed 3 percent per annum, and shall be so secured and subject to such terms and conditions, as shall be determined by the Secretary. A loan may be in an amount not to exceed the total development cost of the project except that, in the case of limited profit sponsors, a loan may not exceed 90 percent of total development cost.

§ 277.7 Loan agreement.

Upon approval of a loan and reservation of funds, the Secretary will prepare and forward a loan agreement for execution by the applicant. The loan agreement will set forth the terms and conditions of the loan and will also specify conditions which must be fulfilled precedent to the making of the loan. The fully executed loan agreement will constitute the loan contract between the applicant and the Secretary during the life of the loan.

§ 277.8 Regulatory agreement.

Prior to loan disbursement, an applicant is required to enter into a regulatory agreement with the Secretary under which the applicant shall agree (a) to establish rentals approved by the Secretary, (b) to limit occupancy of the project to elderly or handicapped families in accordance with occupancy criteria approved by the Secretary, including prescribed income limits, (c) not to rent any portion of the project for transient or hotel use, and (d) to provide a governing board and management acceptable to the Secretary.

277.9 Other requirements.

(a) All laborers and mechanics employed by contractors and subcontractors in the construction of housing and related facilities assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a—276a–5, and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act, 40 U.S.C. 327–332.

(b) All contracts for construction work paid for in whole or in part from loan funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kickback") Act, 40 U.S.C. 276c, and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(c) The requirements of title VI of the Civil Rights Act, 42 U.S.C. 2000d et seq., that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to projects receiving assistance under the Act.

(d) All contracts for construction work paid for in whole or in part from loan funds provided under the Act are subject to Executive Order No. 11246 (30 F.R. 12319, Sept. 28, 1965), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(e) The provisions of title VIII (Fair Housing) of the Civil Rights Act of 1968, Public Law 90–284, 42 U.S.C. 3601–3619, prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

§ 277.10 Assistance to nonprofit organizations.

Nonprofit organizations are eligible for financial assistance under section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x, to cover costs expected to be incurred in planning and obtaining financing for the rehabilitation or construction of housing projects for elderly or handicapped persons under the Act. Such assistance is in the form of 80 perecnt interest-free loans to cover such costs directly related to the project as organization expenses, legal fees, consultant fees, preliminary site engineering fees, site options, FHA and GNMA application fees, and construction loan fees. Requests for such assistance should be submitted to the Assistant Commissioner for Subsidized Housing Programs, 451 Seventh Street SW., Washington, D.C. 20410.

§ 277.11 Refinancing.

Projects may be refinanced by mortgages insured under section 236(j) of the National Housing Act, 12 U.S.C. 1715z–1(j), provided that application therefor is made within a reasonable time after project completion. As a condition of obtaining a direct loan, an applicant must agree to seek such refinancing within 30 days after project completion if it finds that refinancing is feasible and advantageous to the occupants of the project. Application for refinancing should be made to the appropriate HUD Regional Office.

PART 279—COLLEGE HOUSING

Sec.
279.1 Definitions.
279.2 General policy.
279.3 Eligible projects.
279.4 Applications.
279.5 Assistance terms.
279.6 Assistance agreements.
279.7 Grants to public educational institutions.
279.8 Other requirements.

AUTHORITY: The provisions of this Part 279 issued under sec. 402, 64 Stat. 78; 12 U.S.C. 1749a.

§ 279.1 Definitions.

As used in this part:

(a) All terms shall have the same meaning as given them in the Act.

(b) "Act" means title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749 et seq.).

(c) "Construction" means erection of new structures, or rehabilitation, alteration, conversion, or improvement of existing structures.

(d) "Development cost" means the cost of construction, land and site improvements, and includes preliminary development expenses, architect and engineering expense, legal and administrative expense, and interest during construction; except that, in the case of purchase of facilities, such cost shall be as approved by the Secretary.

(e) "Educational institution" means any public or nonprofit private college, university, or other institution which offers or will offer within a reasonable time after completion of the facility at least a 2-year program acceptable for full credit toward a bachelor's degree; any hospital operating a school of nursing beyond the level of high school approved by State authority or internship and resident programs approved by recognized authority providing housing for their students; or any nonprofit corporation, student cooperative, or public body, eligible under section 404(b) of the Act, providing housing and related facilities for students and faculty of educational institutions.

(f) "Housing and other educational facilities" means (1) structures suitable for dwelling use, including dormitories, apartments, and single family dwellings, and (2) structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries, health facilities, or other essential service facilities.

(g) "Secretary" means the Secretary of Housing and Urban Development or any officer authorized to perform the functions of the Secretary.

(h) "State" means the several States, the District of Columbia, and the Territories and possessions of the United States, including the Commonwealth of Puerto Rico.

§ 279.2 General policy.

The objective of this program is to assist educational institutions in providing housing and other educational facilities for students and faculties through direct loans for the construction or purchase of such facilities, or through annual debt service grants to reduce the cost of borrowing from other sources for such purposes, where private financing is not available on terms and conditions equally as favorable as for a direct loan. Assistance is also provided to hospitals operating nursing schools beyond the high school level or approved for internships.

§ 279.3 Eligible projects.

Assistance in financing the construction or purchase of housing and other educational facilities may be provided under the following conditions:

(a) Construction must not be of elaborate or extravagant design or materials and must be undertaken in an economical manner.

(b) Construction must not have been completed at the time the application for assistance is made.

(c) A loan or grant-supported loan cannot be made solely for the purpose of refunding a long-term loan obtained prior to the filing of an application.

(d) Grant assistance will not accrue for any period prior to occupancy of the facilities.

(e) Site acquisition is limited to the amount of land reasonably necessary for the proposed housing or other educational facility.

(f) Projects to provide facilities for religious purposes or for theological seminaries or other schools providing training primarily for religious vocations are ineligible for assistance.

(g) Housing for the use of specific groups of students, such as fraternities or sororities, is eligible only if such housing is part of the overall housing plan of the college and if the housing will be operated under the direct responsibility and control of the college.

(h) An eligible service facility must provide an essential service in connection with the institution's housing plan.

§ 279.4 Applications.

(a) Information and application forms may be obtained from and applications submitted to the Regional Office of the Department of Housing and Urban Development which serves the area in which the educational institution is located. Applications will be received periodically and considered concurrently for both the direct loan and grant subsidy programs. In order to maintain flexibility in the allocation of available funds, HUD reserves the option to approve either a direct loan or a grant to a particular applicant.

(b) Prior to approval of a direct loan or grant, the applicant educational institution must establish that it:

(1) Has the necessary legal authority to finance, construct, operate and maintain the proposed facilities, to apply for and receive the proposed assistance, and to provide such security as shall be required by the Secretary;

(2) Has the ability to comply with the terms and conditions governing receipt of assistance and operation of the project;

(3) Has or will have such interest in or title to the project site, including access thereto, as will assure undisturbed use, possession and operation of the facilities during the period of assistance; and

(4) Will retain title to and all of its right, title, and interest in and to the project during the period of assistance, except as otherwise expressly approved by the Secretary.

§ 279.5 Assistance terms.

(a) Direct loans for eligible development cost shall be for such period not to exceed 40 years (50 years for projects for which funds were reserved prior to July 1, 1968), bear interest at such rate not to exceed 3 percent per annum, and be so secured and subject to such terms and conditions, as shall be determined by the Secretary.

(b) Annual grants shall be made over a fixed period not exceeding 40 years, as determined by the Secretary, in an amount equal to the difference between the average annual debt service required to amortize the private market loan to cover eligible development cost and the average annual debt service which would be required to amortize a direct loan of like term. Fund limitations may require the setting of maximum limits for the grant.

§ 279.6 Assistance agreements.

Upon approval of a direct loan or grant, together with reservation of funds, the Secretary will prepare and forward a loan agreement or grant agreement for execution by the educational institution. The agreement will set forth the terms and conditions of the loan or grant and will also specify conditions which must be fulfilled precedent to making of the loan or grant. The fully executed agreement will constitute the contract between the educational institution and the Secretary during the life of the direct loan or grant, and in the case of a grant will guarantee continuation of the grant payments so long as the related private market bonds are outstanding.

§ 279.7 Grants to public educational institutions.

All public educational institutions approved for grant assistance must comply with the following requirements except as otherwise expressly approved by the Secretary:

(a) Submit a financing plan in form and substance acceptable to the private bond market and satisfying minimum standards established by the Secretary;

(b) Publicly advertise the bonds in a financial newspaper of general use by the bond market to which the bonds will be offered;

(c) Accept bids only for the entire issue; and

(d) Obtain an unqualified approving opinion of bond counsel experienced in municipal bonds whose opinions are marketable by reason of previous acceptance by investment dealers, banks, or insurance companies.

§ 279.8 Other requirements.

(a) All laborers and mechanics employed by contractors and subcontractors in the construction of housing and educational facilities assisted under the Act shall be paid wages at rates not less than those prevailing in the locality involved for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (40 U.S.C. 327–332).

(b) All contracts for construction work paid for in whole or in part from assistance funds provided under the Act shall provide that the contractor shall comply with the Copeland ("Anti-Kickback") Act (40 U.S.C. 276c) and the regulations of the Secretary of Labor thereunder (29 CFR Part 3).

(c) The requirements of title VI of the Civil Rights Act (42 U.S.C. 2000d et seq.) that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination are applicable to educational institutions receiving assistance under the Act.

(d) All contracts for construction work paid for in whole or in part from assistance funds provided under the Act are subject to Executive Order 11246 (30 F.R. 12319, Sept. 28, 1965), as amended by Executive Order 11375 (32 F.R. 14303, Oct. 17, 1967), providing for equal opportunity in employment, and the rules and regulations of the Department of Labor with respect thereto.

(e) The provisions of title VIII (Fair Housing) of the Civil Rights Act of 1968 (Public Law 90–284, 42 U.S.C. 3601–3619), prohibiting refusal to rent to or discrimination against any person in terms or conditions of rental or provision of services on account of race, color, religion, or national origin, are applicable to projects assisted under the Act.

Chapter III—Government National Mortgage Association

Subchapter A—Introduction

Part
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310 Bylaws of the Government National Mortgage Association.

Subchapter B—Special Assistance Functions

320 Description.
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360 Description.
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SUBCHAPTER A—INTRODUCTION

PART 300—GENERAL

Sec.
300.1 Scope of chapter.
300.3 Description.
300.5 Creation and status.
300.7 Area of operations.
300.9 Offices.
300.11 Power of attorney.
300.13 Exceptions.

AUTHORITY: The provisions of this Part 300 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 300.1 Scope of chapter.

This chapter consists of general information and does not purport to set forth all of the procedures and requirements that apply to the operations of the Association. Complete specific information as to any aspect of such operations may be obtained from the regional offices listed in § 300.9.

§ 300.3 Description.

The Government National Mortgage Association (hereafter in this chapter called the Association) purchases, services, and sells mortgages insured or guaranteed by the Federal Housing Administration (FHA) and the Veterans Administration (VA), furnishes fiduciary services to itself and other departments and agencies of the Government, and guarantees privately issued securities backed by trusts or pools of mortgages or loans which are insured or guaranteed by FHA and VA and certain loans insured by the Farmers Home Administration.

§ 300.5 Creation and status.

The Association is a Government corporation in the Department of Housing and Urban Development. The origin of the Association is in the creation on February 10, 1938, under title III of the National Housing Act, of the National Mortgage Association of Washington. On April 11, 1938, its name was changed to Federal National Mortgage Association. Effective November 1, 1954, it was rechartered by the Congress as a mixed-ownership corporation. Effective September 1, 1968, it was partitioned by the Congress into two corporations, one of which is the Association. The operations of the Association are conducted under its statutory charter contained in title III of the National Housing Act, 12 U.S.C. 1716 et seq.

§ 300.7 Area of operations.

The Association is authorized to conduct its business in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 300.9 Offices.

The Association directs its operations from its office located at 451 Seventh Street SW., Washington, D.C. 20414. It has made provisions for the carrying on of such operations through the Federal National Mortgage Association (FNMA). The regional offices of FNMA are listed below:

Atlanta, Ga. 30303, 34 Peachtree Street NE.: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Chicago, Ill. 60603, 1112 Commonwealth-Edison Building, 72 West Adams Street: Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

Dallas, Tex. 75201, 411 North Akard Street: Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas.

Los Angeles, Calif. 90005, 3540 Wilshire Boulevard: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming.

Philadelphia, Pa. 19103, 5 Penn Center Plaza: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia.

§ 300.11 Power of attorney.

(a) The Association does hereby make, constitute, and appoint each of the persons named in paragraph (c) of this section its true and lawful attorney-in-fact, for the Association and in its name and stead:

(1) To purchase or contract to purchase any note, bond, or other evidence of indebtedness and any accompanying real estate mortgage, deed to trust, security deed, chattel mortgage, or collateral or security of whatsoever kind or nature, to modify or consent to the modification of any such contract, and to act or authorize action to enforce any such contract;

(2) To endorse, assign, sell, exchange, amend, modify, extend, release, cancel, or renew any note, bond, check, or other evidence of indebtedness now or hereafter held by the Association, and to release from liability any maker, obligor, or guarantor on any such note, bond, check, or other evidence of indebtedness;

(3) To satisfy, discharge, release, amend, assign, modify, extend, renew, subordinate, foreclose, or liquidate in any legal manner, in whole or in part, any chattel mortgage, real estate mortgage, deed of trust, security deed, or collateral or security of whatsoever kind or nature, securing any note, bond, check, or other evidence of indebtedness now or hereafter held by the Association, and to exercise any right or authority which the Association has or may have pursuant to the terms of any such security instrument or evidence of indebtedness, including any power of appointment contained therein;

(4) To assign, convey, sell, lease, or sublease and to contract for the assignment, conveyance, sale, lease, or sublease of any real estate, chattel, security, or property of any sort or nature, or any interest therein, now held or hereafter acquired by the Association;

(5) To discharge, satisfy, release, waive, enforce, compromise, subordinate, or assign, in whole or in part, any judgment now or hereafter entered in favor of, or assigned to, the Association;

(6) To assign, surrender, release, or modify, or consent to the assignment, surrender, release, or modification of, any policy of insurance, or any right arising therefrom, of which the Association now is or hereafter shall become the assignee, beneficiary, or the insured, or in which the Association now has or hereafter may have any interest of any kind or nature; and to execute proof of loss, proof of death, statement of claimant, and any other instrument in connection with any such policy of insurance and any right arising therefrom;

(7) To execute, acknowledge, deliver, file for record, and record any such instrument, and to perform such other act or acts as may be necessary and proper to effectuate the foregoing; and

(8) To designate and appoint in behalf of the Association such other attorneys-in-fact for the Association as he may deem appropriate for the purpose of releasing or satisfying of record any specific mortgage, deed of trust, security deed, or other security instrument now or hereafter held by the Association.

(b) The Association does further grant unto each of such attorneys-in-fact, and any other attorney-in-fact designated and appointed pursuant to this section, full power and authority to do and perform all and every act and thing requisite, necessary, and proper to carry into effect the power or powers granted by or under this section as fully, to all intents and purposes, as the Association might or could do, and hereby does ratify and confirm all that each of such attorneys-in-fact, and any other attorney-in-fact designated and appointed pursuant to this section, shall lawfully do or cause to be done by virtue of the power or powers granted by or under this section.

(c) The persons appointed attorneys-in-fact by paragraph (a) of this section are:

(1) The Federal National Mortgage Association, a Government-sponsored private corporation.
(2) Allan E. Arneson, of Los Angeles, Calif.
(3) [Reserved]
(4) Howard S. Carnes, of Atlanta, Ga.
(5) W. D. Cornwell, of Atlanta, Ga.
(6) [Reserved]
(7) [Reserved]
(8) K. A. Duncan, of Philadelphia, Pa.
(9) [Reserved]
(10) [Reserved]
(11) [Reserved]
(12) [Reserved]
(13) [Reserved]
(14) E. V. Hopkins, of Washington, D.C.
(15) [Reserved]
(16) [Reserved]
(17) Hughes A. King, of Dallas, Tex.
(18) John J. Deisher, of Philadelphia, Pa.
(19) Hugh J. McConville, of Dallas, Tex.
(20) Albert D. Oltman, of Los Angeles, Calif.
(21) Frank W. Pence, of Washington, D.C.
(22) Harry Rode, of Dallas, Tex.
(23) Edward N. Sambol, of Chicago, Ill.
(24) [Reserved]
(25) Oliver J. McCarron, of Philadelphia, Pa.
(26) [Reserved]
(27) Norbert C. Greene, of Philadelphia, Pa.
(28) John R. Hayes, of Chicago, Ill.
(29) R. P. Martin, of Dallas, Tex.
(30) B. Rhodes, Jr., of Atlanta, Ga.
(31) T. J. Swanson, Jr., of Atlanta, Ga.
(32) Norman Camber, of Los Angeles, Calif.
(33) Howard A. Morton, of Chicago, Ill.
(34) Jack Powell, of Chicago, Ill.
(35) Norman M. Reid, of Los Angeles, Calif.
(36) Keller D. Thormahlen, of Dallas, Tex.
(37) Jack Tuggle, of Los Angeles, Calif.

§ 300.13 Exceptions.

In the conduct of its affairs, in individual cases or classes of cases, the

Association reserves the right, consistent with law, without prior notice and at any time, to alter or waive any of the requirements contained in this chapter or elsewhere or to impose other and additional requirements; it further reserves the right, without prior notice and at any time, to amend or rescind any or all of the material set forth herein.

PART 310—BYLAWS OF THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Sec.
310.1 Bylaws of the Association.
Appendix.

§ 310.1 Bylaws of the Association

The bylaws of the Government National Mortgage Association, duly adopted by the Secretary of Housing and Urban Development pursuant to section 308 of the National Housing Act (12 U.S.C. 1723), are set forth in the following appendix.

APPENDIX

ARTICLE 1—GENERAL PROVISIONS

SECTION 1.01. *Name.* The name of the corporation is Government National Mortgage Association (the "Association").

SEC. 1.02. *Powers and Duties.* There are hereby delegated to the Association, except as otherwise provided in these Bylaws, all the powers and duties of the Association which are by law vested in the Secretary of Housing and Urban Development (the "Secretary").

SEC. 1.03. *Principal Office and Other Offices.* The principal office of the Association shall be in the District of Columbia. Other offices of the Association shall be in such other places as may be deemed by the Secretary to be necessary or appropriate.

SEC. 1.04. *Seal.* The seal of the Association shall be of such design as shall be approved from time to time by the Secretary, and may be affixed to any document by impression, by printing, by rubber stamp, or otherwise.

SEC. 1.05. *Fiscal Year.* The fiscal year of the Association shall end on the thirtieth day of June of each year.

ARTICLE 2—GENERAL POLICIES

The Secretary of Housing and Urban Development shall determine the general policies of the Association.

ARTICLE 3—THE OFFICERS

SEC. 3.01. *Number.* The Executive Officers of the Association shall consist of a President, one or more Vice Presidents, a Treasurer, a General Counsel, a Secretary of the Association, and a Controller, and there shall be such other officers, assistant officers, agents, attorneys, and employees as may be deemed necessary by the Secretary of Housing and Urban Development.

SEC. 3.02. *General Authority and Duties.* All officers, agents, attorneys, and employees of the Association shall have such authority and perform such duties in the management and conduct of the business of the Association as may be provided in these Bylaws, as may be established by the Secretary not inconsistent with these Bylaws, or as may be delegated to them in a manner not inconsistent with these Bylaws. The President, each Vice President, and each Assistant Vice President are severally expressly empowered in the name of the Association to sign all contracts and other documents, instruments, and writings which call for execution by the Association in the conduct of its business and affairs, and to encumber, mortgage, pledge, convey, or otherwise alien any property which the Association may own or in which it may have an estate, right, title, or interest.

SEC. 3.03. *Election, Tenure, and Qualifications.* The Executive Officers named in section 3.01 shall be appointed by the Secretary and shall serve without term. The officers, agents, attorneys, and employees of the Association, other than Executive Officers, shall be appointed by the President or by any other Executive Officer to whom the President shall have delegated the authority.

SEC. 3.04. *Removal.* Any officer, agent, attorney, or employee may be removed by the Secretary. Other than an Executive Officer, any officer, agent, attorney, or employee may also be removed by the President or by any other Executive Officer having authority to choose or appoint the officer, agent, attorney, or employee. Any such removal shall not be effected in a manner inconsistent with applicable law, these Bylaws, and the corporate charter.

SEC. 3.05. *The President.* The President shall be the chief executive officer and shall have active executive management of the operations of the Association. Except as may be otherwise provided by law, the corporate charter, these Bylaws, or the Secretary, the President of the Association shall have plenary power and authority to perform all duties ordinarily incident to the office of President and such other duties as may be assigned to him from time to time by the Secretary. The President may prescribe, amend, and rescind regulations (for publication in the FEDERAL REGISTER or otherwise), requirements and procedures governing the manner in which the general business of the Association will be conducted and, in the exercise of discretion, shall have power to provide for individual exceptions thereto. The President shall designate the sequence in which other officers, during the absence or inability to act of the President or during a vacancy in the office of President, shall perform the duties and exercise the power and authority of the President; otherwise such designation shall be made by the Secretary.

SEC. 3.06. *The Vice Presidents.* Each Vice President shall have such powers and perform such duties as the Secretary may prescribe or as the President may delegate to him.

SEC. 3.07. *The Treasurer.* The Treasurer shall be the financial officer, and, in general, shall perform all the duties ordinarily incident to the office of Treasurer and such other duties as may be assigned to him by the Secretary or by the President. The Treasurer may be required to furnish bond in such amount as shall be determined by the Secretary or the President of the Association and the premium for any such bond shall be paid by the Association.

SEC. 3.08. *The General Counsel.* The General Counsel shall be the principal consulting officer of the Association in all matters of legal significance or import; shall be responsible for and direct all counsel, attorneys, employees, and agents in the performance of all legal duties and services for and on behalf of the Association; shall perform such other duties and have such other powers as are ordinarily incident to the office of General Counsel; and shall perform such other duties as, from time to time, may be assigned to him by the Secretary or by the President of the Association.

SEC. 3.09. *The Secretary of the Association.* The Secretary of the Association shall be the custodian of records and of the seal of the Association; and, in general, shall perform all the duties ordinarily incident to the office of corporate Secretary and such other duties as may be assigned to him by the Secretary of Housing and Urban Development or by the President of the Association. The Secretary of the Association and any Assistant Secretary of the Association are expressly empowered to attest all signatures and to affix the seal to all documents the execution of which on behalf of the Association under its seal is duly authorized.

SEC. 3.10. *The Controller.* The Controller shall keep or cause to be kept full and accurate accounts of all assets, liabilities, commitments, receipts, disbursements, and other financial transactions of the Association; shall certify vouchers for payment by the Treasurer or his designee, and shall designate, with the written concurrence of the President, such other officers, agents, attorneys, and employees, severally, who may so certify; and, in general, shall perform such other duties as from time to time may be assigned to him by the Secretary or by the President of the Association.

SEC. 3.11. *Assistant Officers.* Each assistant to an officer, including but not limited to any Assistant Vice President, any Assistant Treasurer, any Assistant General Counsel, and any Assistant Secretary of the Association, and any other such assistant to any officer, shall perform such duties as are, from time to time, delegated to him, in writing, by the officer to whom he is an assistant, by the President, or by the Secretary. At the request of the officer to whom he is an assistant, an assistant officer may temporarily perform the duties of that officer, and when so acting shall have the powers of and be subject to the restrictions imposed upon such officer.

ARTICLE 4—AMENDMENTS

The power to alter, amend, or repeal these Bylaws, and to adopt new Bylaws is retained by the Secretary of Housing and Urban Development.

SUBCHAPTER B—SPECIAL ASSISTANCE FUNCTIONS

PART 320—DESCRIPTION

Sec.
320.1 Authority.
320.3 Mortgages eligible for purchase.
320.5 Fees or charges.
320.7 Below-market interest rate mortgages.
320.9 Financing of special assistance functions.

AUTHORITY: The provisions of this Part 320 issued under sec. 302, 82 Stat. 540; 12 U.S.C. 1723a.

§ 320.1 Authority.

The Special Assistance Functions of the Association are authorized by section 305 of the National Housing Act, to provide financing for selected types of mortgages that qualify under special housing programs. The Association also provides assistance, from time to time, through the purchase of home mortgages generally as a means of retarding or stopping a decline in mortgage lending and home building activities which threatens materially the stability of a high level National economy.

§ 320.3 Mortgages eligible for purchase.

Operations under the Special Assistance Functions are confined, so far as is practicable, to mortgages which are deemed by the Association to be of such quality as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage

investors, but which, at the time the mortgages are offered for purchase, are not necessarily readily acceptable to such investors. When and as authorized by the President of the United States, or by the Congress, the Association announces the inauguration of Special Assistance Programs, specifying the types of mortgages that will be purchased, the prices to be paid therefor, and any special acceptability requirements relating to such Programs.

§ 320.5 Fees or charges.

Fees or charges for the Association's services under the Special Assistance Functions are established with the objective that all related costs and expenses will be within the income of the Association derived from the operations and that such operations will be fully self-supporting. In connection with all purchases of mortgages, unless otherwise specified as to a particular Special Assistance Program, the Seller is required to pay a Purchase and Marketing fee. For the issuance of commitments to purchase mortgages in the future, a Commitment fee is also charged.

§ 320.7 Below-market interest rate mortgages.

The Association is expressly authorized to purchase below-market interest rate mortgages insured under sections 221 (d) (3) and 221(h) of the National Housing Act. As to these mortgages, the Association's operations are not required to be self-supporting.

§ 320.9 Financing of special assistance functions.

Funds required for operations of the Special Assistance Functions are obtained primarily by borrowings from the Secretary of the Treasury. Additional sources of funds are portfolio liquidations, sales of certificates of beneficial interests or participations in mortgages, and net earnings. All of the benefits and burdens incident to the administration of the Special Assistance Functions inure solely to the Secretary of the Treasury.

PART 330—ELIGIBLE SELLERS OF MORTGAGES

Sec.
330.1 General.
330.3 Servicing facilities.
330.5 VA-guaranteed mortgages.
330.7 FHA-insured mortgages.
330.9 Governmental instrumentality.
330.11 Termination.

AUTHORITY: The provisions of this Part 330 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 330.1 General.

Designation of an eligible Seller to sell mortgages to the Association under its Special Assistance Functions is consummated by the execution of a Selling Agreement.

§ 330.3 Servicing facilities.

The Selling Agreement requires the Seller, with respect to each home mortgage offered or submitted for purchase, either (a) to be qualified as a Servicer by the execution of a Servicing Agreement and agree to service the mortgage or (b) to proffer facilities satisfactory to the Association for servicing the mortgage. Sellers are not required to furnish servicing facilities in connection with the purchases by the Association of multifamily mortgages.

§ 330.5 VA-guaranteed mortgages.

In order to be eligible to sell a VA-guaranteed mortgage to the Association, a seller must be acceptable to the Association and also must come within one of the following three classifications:

(a) Any lender that is classified by VA as a supervised lender under Chapter 37 of title 38, United States Code, including any National bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, including the District of Columbia;

(b) Any lender that is an FHA-approved mortgagee, as defined in § 330.7; or

(c) Any other lender, if such lender has a net worth of not less than $100,000 in assets acceptable to the Association.

§ 330.7 FHA-insured mortgages.

In order to be eligible to sell an FHA-insured mortgage to the Association, a Seller must be acceptable to the Association and must be an FHA-approved mortgagee, which term does not include a mortgagee that has been approved on the basis of being a duly authorized loan correspondent of an approved mortgagee qualified with FHA to originate loans under the National Housing Act.

§ 330.9 Governmental instrumentality.

Except with respect to mortgages insured under sections 221(d) (3) or 221(h) of the National Housing Act, a State territorial, or municipal instrumentality cannot be become an approved Seller.

§ 330.11 Termination.

The Association may, upon notice as stipulated in the Selling Agreement, terminate the Agreement in whole or in part in accordance with the terms therein provided.

PART 340—PURCHASE REQUIREMENTS

Sec.
340.1 Scope of part.
340.3 General requirements.
340.5 Ownership.
340.7 Original mortgagee.
340.9 Mortgage interest rate.
340.11 Offering periods.
340.13 Maximum purchase price.
340.15 Maximum mortgage amount.
340.17 Advances by seller.
340.19 Credit.
340.21 Property.
340.23 Occupancy.
340.25 Mortgage lien.
340.27 Title evidence.
340.29 Hazard insurance.
340.31 Eligibility of VA mortgages.

AUTHORITY: The provisions of this Part 340 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 340.1 Scope of part.

This part describes the general requirements and procedures governing the purchase by the Association of mortgages under the Special Assistance Functions. Other requirements and procedures are set forth in greater detail in the Sellers' Guide of the Association.

§ 340.3 General requirements.

As a condition precedent to the offering of mortgages to the Association for purchase, the Seller and the Association must have executed a Selling Agreement pursuant to Part 330 of this chapter. Any mortgage offered or submitted to the Association must meet the conditions contained in such Agreement. Each mortgage must meet all the requirements of the law, rules, and regulations that are applicable, and must also conform to any special acceptability requirements prescribed by the Association and to the pertinent requirements of this part.

§ 340.5 Ownership.

On the date of the Seller's offer to enter into an immediate purchase contract with the Association, the Seller must be the owner of the mortgage.

§ 340.7 Original mortgagee.

The Seller must be the original mortgagee, and must not have made any prior sale of the mortgage offered to the Association.

§ 340.9 Mortgage interest rate.

Except for those below market interest rate mortgages insured under sections 221(d) (3) and 221(h), each mortgage must bear interest at the highest rate permitted by FHA or VA Regulations for that type of mortgage at the time of issuance of the FHA insurance commitment or the VA Certificate of Reasonable Value.

§ 340.11 Offering periods.

(a) *Immediate purchase contract.* Mortgages may not be offered to the Association for immediate purchase prior to the date of the related FHA insurance commitment or VA Certificate of Reasonable Value, nor prior to the date of final disbursement of the loan proceeds; nor may they be offered later than 4 months after the date of the insurance or guaranty thereof.

(b) *Commitment contract.* An offer of a commitment contract may not be delivered to the Association prior to the issuance of the FHA insurance commitment or the VA Certificate of Reasonable Value. Subject to specific contractual treatment otherwise, an offer of a commitment contract covering a multifamily housing mortgage may not be delivered to the Association subsequent to the commencement of construction or rehabilitation.

§ 340.13 Maximum purchase price.

The Association may not purchase any mortgage at a price in excess of par.

§ 340.15 Maximum mortgage amount.

In general, the original principal obligation of mortgages purchased under the Special Assistance Functions must not exceed $17,500 for each dwelling unit, or $20,000 for each dwelling unit having four or more bedrooms. These limitations do not apply to mortgages covering property located in Alaska, Guam, or Hawaii; to mortgages insured under section 220 or title VIII of the National Housing Act; to mortgages insured under section 213 of such Act and covering property located in urban renewal areas; to mortgages insured under title X of such Act with respect to new communities approved under section 1004 thereof; or, in certain circumstances of local tax abatement, to below-market interest rate mortgages insured under section 221(d)(3) of such Act.

§ 340.17 Advances by seller.

On the date of submission to the Association, each mortgage must be current with respect to matured installments of principal, interest, and deposits. The Seller, within the immediately preceding 3 months must not have advanced funds, nor have induced or solicited any advances of funds by another, directly or indirectly, for the payment of any amount required by the note or mortgage, except for interest accruing from the date of the note or the date of disbursement of the loan proceeds, whichever is later, to the day which precedes by 1 month the due date of the first full installment of principal and interest.

§ 340.19 Credit.

With respect to each mortgage, there should not be any circumstances of, or conditions affecting, the mortgagor, the present owner, or the affairs of either, that would cause the mortgage to become delinquent.

§ 340.21 Property.

With respect to each mortgage, there should not be any circumstances of, or conditions affecting, the mortgaged premises that would adversely affect the value or marketability of the mortgage or that would cause private investors to regard the mortgage as unacceptable for prudent investment.

§ 340.23 Occupancy.

Subject to specific contractual treatment otherwise, the property securing a home mortgage must be occupied at the time the mortgage is submitted to the Association for purchase. The property securing a multifamily housing mortgage must, at the time the mortgage is submitted to the Association for purchase be occupied to the extent that the income therefrom will cover all property expenses, carrying charges, and payments required by the mortgage.

§ 340.25 Mortgage lien.

Except in the case of certain FHA-insured home improvement loans, each mortgage must be a first and paramount lien on the security of real property, and on the related personal property if any is required to secure the loan, subject only to liens for taxes not due and payable, acceptable special assessments not in arrears, and conditions, restrictions, and encumberances deemed by the Association not to be material.

§ 340.27 Title evidence.

With respect to each mortgage, the title evidence to be delivered by the Seller must meet requirements prescribed by law or the applicable FHA or VA Regulations, and must be in such form and substance as to meet the Association's title evidence requirements.

§ 340.29 Hazard insurance.

Property securing each mortgage must be covered by kinds and amounts of hazard insurance that meet all of the hazard insurance requirements of the Association.

§ 340.31 Eligibility of VA mortgages.

To be eligible for purchase by the Association, a VA-guaranteed mortgage must in all cases meet current requirements set forth in the Sellers Guide.

PART 350—SERVICING AND SALES OF MORTGAGES

Sec.
350.1 Servicing requirements.
350.3 Servicers' compensation.
350.5 Sales.

AUTHORITY: The provisions of this Part 350 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 350.1 Servicing requirements.

A seller may not service mortgages of the Association unless it has qualified as an eligible Servicer and has executed a Servicing Agreement. The Servicer must establish that it has an office with servicing facilities satisfactory to the Association located within approximately 100 miles of the mortgaged property. When the mortgage is submitted for purchase, the Servicer (whether the Seller, or another Servicer that the Seller has previously ascertained is satisfactory to the Association) must have consented to service the mortgage, and must have executed documentary evidence of such consent. This requirement does not apply to multifamily housing mortgages.

§ 350.3 Servicers' compensation.

The compensation of Servicers is at a contractual rate or rates, as agreed to by the Association and the Servicers.

§ 350.5 Sales.

Mortgages owned by the Association are available for sale to qualified investors. Information concerning possible sales can be obtained from the regional offices listed in § 300.9 of this chapter.

SUBCHAPTER C—MANAGEMENT AND LIQUIDATING FUNCTIONS

PART 360—DESCRIPTION

Sec.
360.1 General.
360.3 Financing.

AUTHORITY: The provisions of this Part 360 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 360.1 General.

Section 306 of the National Housing Act authorizes the Association to manage and liquidate a portfolio of mortgages acquired prior to, and pursuant to contracts entered into prior to, November 1, 1954, and certain other mortgages, loans, and other obligations acquired and to be acquired subsequently from other Government agencies, in an orderly manner, with a minimum of adverse effect upon the home mortgage market and minimum loss to the Federal Government. Under the Management and Liquidating Functions, the Association also provides fiduciary services to itself and other Departments and agencies of the Federal Government, and guarantees securities issued by private institutions against pools of Federally underwritten mortgages and loans.

§ 360.3 Financing.

Funds required for the Management and Liquidating Functions are obtained principally through borrowings from the Secretary of the Treasury. Additional sources of funds are liquidations of the portfolio, sales of certificates of beneficial interests or participations in mortgages, net earnings, and appropriations. The Association is also expressly authorized to sell its obligations to private investors. The aggregate amount of such obligations issued to private investors, the proceeds of which are paid to the Secretary of the Treasury in reduction of the Association's related indebtedness, may not exceed the Association's ownership under such functions, free from any liens or encumbrances, of cash, mortgages, and other approved securities. Such obligations are not guaranteed by the United States and do not constitute a debt or obligation of the United States. All of the benefits and burdens incident to the Management and Liquidating Functions inure solely to the Secretary of the Treasury.

PART 370—MORTGAGE ACTIVITIES

Sec.
370.1 Original portfolio.
370.3 Purchases.
370.5 Servicing.
370.7 Sales.

AUTHORITY: The provisions of this Part 370 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 370.1 Original portfolio.

The Management and Liquidating Functions began on November 1, 1954, with the portfolio of mortgages and outstanding contracts owned by the Federal National Mortgage Association as of October 31, 1954.

§ 370.3 Purchases.

The Association purchases obligations offered to it by the Secretary of Housing and Urban Development and mortgages of residential property offered to it by any Federal instrumentality.

§ 370.5 Servicing.

Home mortgages owned by the Association under the Management and

Liquidating Functions are serviced as described in Part 350 of this chapter.

§ 370.7 Sales.

Sales of mortgages owned under the Management and Liquidating Functions are consummated as described in Part 350 of this chapter.

PART 380—FIDUCIARY ACTIVITIES

Sec.
380.1 General.
380.3 Appropriations.

AUTHORITY: The provisions of this Part 380 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

§ 380.1 General.

The Association is authorized by section 302(c) of the National Housing Act to create, accept, execute, and administer trusts and other fiduciary undertakings appropriate for financing purposes. In relation thereto, it is authorized to acquire and otherwise deal in any mortgages or other types of obligations in which any department or agency of the United States listed in section 302(c)(2) of such Act may have a financial interest. Under its fiduciary powers, accounted for under the Management and Liquidating Functions, the Association creates, accepts, and administers trusts consisting of interests in mortgages and obligations, sells to private investors certificates of beneficial interest, or participations, in the mortgages or obligations or in the interest and principal payments derived therefrom, and provides for payment of interest and principal and for retirement of the participations. The Association under the Management and Liquidating Functions, in its ordinary corporate capacity as contrasted to its fiduciary capacity, is expressly authorized to guarantee the participations.

§ 380.3 Appropriations.

There is authority for Congress to appropriate such sums as may be necessary to enable the trustor of any trust (as described in § 380.1) to pay to the Association, as trustee, any insufficiency in aggregate receipts from the obligations subject to the trust to provide for the timely payment by the trustee of all interest or principal on the beneficial interests or participations related to such trust.

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

Subpart A—Pass-Through Type Securities

Sec.
390.1 General.
390.3 Eligible issuers of securities.
390.5 Securities.
390.7 Mortgages.
390.9 Pool administration.
390.11 Excess collateral.
390.13 Guaranty.
390.15 Fees.

Subpart B—Bond-Type Securities

390.21 General.
390.23 Eligible issuers.
390.25 Securities.
390.27 Mortgages.
390.29 Trust arrangements.
390.31 Guaranty.
390.33 Fees.

Subpart C—Miscellaneous Provisions

Sec.
390.35 Audits and reports.
390.37 Applications.

AUTHORITY: The provisions of this Part 390 issued under sec. 309, 82 Stat. 540; 12 U.S.C. 1723a.

Subpart A—Pass-Through Type Securities

§ 390.1 General.

The Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities which are based on and backed by a trust or pool composed of mortgages which are insured by the Federal Housing Administration or the Farmers' Home Administration, or insured or guaranteed by the Veterans' Administration. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States. This subpart is limited to "pass-through" securities, including (a) "straight pass-through" and (b) "modified pass-through" types, and does not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the Association's Mortgage-Backed Securities Guide and contracts entered into by the parties. Further information may be obtained from the Government National Mortgage Association, 451 Seventh Street SW., Washington, D.C. 20414.

§ 390.3 Eligible issuers of securities.

Any mortgagee, including a State or local governmental instrumentality, which has been approved by the Federal Housing Administration and which has adequate experience and facilities to issue mortgage-backed securities may be approved for a guaranty by the Association, except that no guaranty shall be made of any security which is tax exempt under the Internal Revenue Code of 1954. No issue of securities will be approved for guaranty unless the issuer has net worth, in assets acceptable to the Association, in the following amounts:

(a) For straight pass-through securities, $100,000.

(b) For modified pass-through securities based on and backed by mortgages upon one- to four-family residences, (1) not less than 2 percent of the first $5 million of modified pass-through securities outstanding after such issue, and (2) not less than 1 percent on all such securities outstanding over $5 million, but in no case need such net worth exceed $250,000.

(c) For modified pass-through securities other than those described in paragraph (b) of this section, (1) not less than 3 percent of the first $5 million of modified pass-through securities outstanding after such issue, and (2) not less than 2 percent on the succeeding $5 million of such securities, and (3) not less than 1 percent on all over $10 million, but in no case need such net worth exceed $500,000.

§ 390.5 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart may, at the option of the issuer, be of one of the following types, but only one of such types may be issued against any single pool of mortgages: (1) Straight pass-through securities, which provide for the payment by the issuer to the holders of a proportionate share of the proceeds of principal and interest, as collected, on account of a pool of mortgages, less servicing fees and other specified costs approved by the Association; and (2) modified pass-through securities, which provide for such payment, whether or not collected, of both specified principal installments and a fixed rate of interest on the unpaid principal balance, with all prepayments being passed through to the holder. In the case of delinquent mortgages in a pool backing modified pass-through securities, the issuer is required to make advances if necessary to maintain the specified schedule of interest and principal payments to the holders, or at its option, at any time 90 days or more after default of any such mortgage, the issuer may repurchase such mortgage. Both straight pass-through and modified pass-through securities must specify the dates by which payments are to be made to the holders thereof, and must indicate the accounting period for collections on the pool's mortgages relating to each such payment, and the securities must also specify a date on which the entire principal to be collected will have been paid or will be payable.

(b) *Issue amount.* Each issue of guaranteed securities must be in a minimum face amount of $2 million. The total face amount of any issue of securities cannot exceed the aggregate unpaid principal balances of the mortgages in the pool.

(c) *Face amount of securities.* The face amount of any security cannot be less than $25,000.

(d) *Transferability.* Securities are transferable, but the share of the proceeds collected on account of the pool of mortgages may not be payable to more than one holder with respect to any security.

(e) *Disclosure.* The issuer must disclose both the average and the total costs to the issuer of the mortgages in the pool, whether the issuer acquired the mortgages by origination or purchase.

§ 390.7 Mortgages.

Each issue of guaranteed securities must be backed by a separate pool of mortgages which:

(a) Are insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code;

(b) Have been insured or guaranteed no longer than 12 months prior to the date on which the Association issues its commitment to guarantee the securities;

(c) Will be replaced by the issuer if found defective by the Association at any time prior to 4 months after the

date on which the Association issues its guaranty of the securities; and

(d) Meet such other standards of acceptability as may be prescribed by the Association.

§ 390.9 Pool administration.

The Association will not guarantee securities if the pool arrangement proposed by the issuer does not satisfactorily provide for:

(a) Servicing of the mortgages in the pool;

(b) Segregation of the cash flow from mortgages in the pool from the other assets of the issuer;

(c) Timely payment of principal and interest, in accordance with the terms of the guaranteed securities;

(d) Notification to the Association of an impending default, on the part of the issuer, in adequate time for the Association to make timely payments on the securities; and

(e) Delivery to a designated custodial agent satisfactory to the Association of the mortgage notes or other evidences of indebtedness secured by the mortgages in the pool and protection of the Association's interest in all assets in the pool as collateral for its guaranty.

§ 390.11 Excess collateral.

The issuer shall maintain, for the benefit of the Association, excess collateral in assets acceptable to the Association of 3 percent of the amount of guaranteed securities outstanding. In lieu of such excess collateral the Association may accept a bond or other assurance of the faithful performance of the fiduciary responsibilities of the issuer.

§ 390.13 Guaranty.

With respect to straight pass-through securities, the Association guarantees the timely payment to the security holder of the proceeds of principal and interest, as collected, as undertaken in the Association's guaranty appearing on the face of the security. With respect to modified pass-through securities, the Association guarantees the timely payment, whether or not collected, of the fixed rate of interest on the outstanding balance and the specified principal installments, as undertaken in the Association's guaranty appearing on the face of the security. As to straight pass-through type securities, any failure or inability of the issuer to make payment as due, to the holders of the securities, from the proceeds from the pool of mortgages which have been collected, or because of failure to make collections, under reasonable and accepted standards of mortgage servicing, shall constitute a default of the issuer. As to modified pass-through securities, any failure or inability of the issuer to make fixed or other payments as due shall be deemed such a default. Upon any default by the issuer and payment under its guaranty by the Association, or any failure of the issuer to comply with the terms of the guaranty transaction, the Association may institute a claim against the excess collateral, or against any assurance in lieu of excess collateral, or may, pursuant to section 306(g) of the National Housing Act, extinguish all the ownership, control, or other interest of the issuer in the pooled mortgages, by letter directed to the issuer and making the mortgages the absolute property of the Association, subject only to unsatisfied rights therein of the holders of the securities, or the Association may do both.

§ 390.15 Fees.

The Association may impose application and guaranty fees, which may vary for straight pass-through and modified pass-through issuances.

Subpart B—Bond-Type Securities

§ 390.21 General.

(a) In addition to the "pass-through" securities dealt with in subpart A of this part, the Association is authorized by section 306(g) of the National Housing Act, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on securities of the "bond-type" which are based on and backed by a trust or pool composed of mortgages which are insured by the Federal Housing Administration or the Farmers' Home Administration, or insured or guaranteed by the Veterans' Administration. The Association's guaranty of mortgage-backed securities is backed by the full faith and credit of the United States.

(b) Sections 390.21 through 390.35 deal with such "bond-type" securities and do not purport to set forth all the procedures and requirements that apply to the issuance and guaranty of such securities. All such transactions are governed by the specific terms and provisions of the contracts entered into by the parties. Further information may be obtained from the Government National Mortgage Association, 451 Seventh Street SW., Washington, D.C. 20414.

§ 390.23 Eligible issuers.

Any corporation, trust, partnership, or other entity with a net worth in assets acceptable to the Association of $50 million or more, and which has the capability to assemble acceptable and eligible mortgages in sufficient quantity to support required minimum issuances of securities, may be approved for a guaranty by the Association. Further, the Association reserves the right to limit the number of issuers in the interest of conducting an orderly market of securities of this type.

§ 390.25 Securities.

(a) *Instruments.* Securities to be issued pursuant to the provisions of this subpart may be in registered or bearer form. Each security shall have terms acceptable to the Association and shall specify its principal amount, the interest rate, and the maturity date, and the securities may include call provisions and other characteristics depending on current market conditions.

(b) *Issue amount.* Until further authorization is given, each issue of guaranteed securities must be in a minimum face amount of $100 million, and no single maturity of an issue may be in face amount less than $100 million unless the total issue exceeds $200 million. The total of the outstanding principal balances of the mortgages upon which any issue is originally based and backed must be at least equal to 100 percent of the face amount of the issue of guaranteed securities. Such ratio as may be required by the governing trust arrangements, between mortgages and other pooled assets and securities outstanding at any one time, shall be maintained, subject to adjustment with the approval of the Association in accord with such trust arrangements.

(c) *Face amount of securities.* The face amount of any security cannot be less than $25,000.

(d) *Transferability.* Securities are transferable but, if registered, are transferable, as to the Association and the issuer, only on the books of a fiscal agent as shall be agreed upon by the Association and the issuer.

(e) *Treasury approval.* Issues of $100 million or larger will be subject to approval of the Secretary of the Treasury.

§ 390.27 Mortgages.

Guaranteed securities issued under these provisions must be based on and backed by mortgages pooled under trust arrangements satisfactory to the Association. Such mortgages must:

(a) Be insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code.

(b) Have been insured or guaranteed no longer than 12 months prior to the date on which the Association issues its commitment to guarantee the securities; and

(c) Meet such other standards of acceptability and eligibility as may be prescribed by the Association from time to time for the issue of mortgage-backed securities of the bond type. But with respect to any particular issue of securities, the related mortgages shall meet only such standards as may be in effect or imposed at the time of the issuance of the related commitment to guarantee.

§ 390.29 Trust arrangements.

(a) The pool of mortgages, together with all proceeds thereof and all other assets backing each issue of "bond-type" securities, shall be held and administered by a corporate trustee which is subject to Federal or State regulation and which is acceptable to the Association. The issuer of the securities may qualify as trustee;

(b) The trust agreement which will be executed by the issuer, the trustee and the Association and which may be reopened subject to the approval of the Association, will provide for:

(1) The issuance of the securities, including the size or other ceilings of the issuance or issuances, the nature and provisions of the securities, the principles and methods of sale and distribution, and

other material matters pertaining to issuance;

(2) Conveyance of the pooled mortgages to the trustee, in trust, to provide the base and backing for the securities and otherwise for purposes of the trust arrangements, and custody of mortgage documents;

(3) Administration of the trust, to include servicing and retirement of the securities, and servicing of the mortgages through their payment or other liquidation;

(4) Principles and methods with respect to reporting requirements, the handling of losses realized from the pooled mortgages, defaults by the issuer, and other appropriate matters;

(5) Timely payment of principal and interest in accord with the terms of securities issued;

(6) Segregation of the cash and other assets flowing or resulting from the pooled mortgages;

(7) Reinvestment of accumulations of proceeds from the pooled mortgages and other assets to the extent necessary to provide adequately for the payment of securities;

(8) Notification to the Association of any impending default of any payment of the securities, in order that the Association may make timely payments thereon;

(9) It is expected that the trustee and issuer or issuers, together or separately, may contract out, consistent with customary and accepted practices, some or all of the responsibilities with respect to all the foregoing.

§ 390.31 Guaranty.

With respect to bond-type securities, the Association will guarantee the timely payment of principal of and interest on such securities, subject to the terms and conditions thereof. The agreements and contracts among the parties will provide upon default of the issuer for the right of the Association, pursuant to section 306(g) of the National Housing Act, to take title to the mortgages and other assets that are subject to the trust arrangements, and to proceed against other assets of the issuer to the extent necessary to satisfy its own claims and the rights of the holders of securities then outstanding. Such action by the Association shall be taken subject to an accounting to the issuer.

§ 390.33 Fees.

The Association may impose application and guaranty fees, which may vary with relation to the size or risk of the guaranty transaction undertaken.

Subpart C—Miscellaneous Provisions

§ 390.35 Audits and reports.

The Association may at any time audit the books and examine the records of any issuer, mortgage servicer, trustee, or agent or other person bearing on its guaranty of mortgage-backed securities, and may require periodic reports from such persons.

§ 390.37 Applications.

Applications for guaranty should be submitted to the Association's home office located at 451 Seventh Street SW., Washington, D.C. 20414.

Chapter IV—Office of Assistant Secretary for Housing Management

Part

490 Advances for public works planning.

491 Grants for advance acquisition of land.

PART 490—ADVANCES FOR PUBLIC WORKS PLANNING

Subpart A—Advances for Public Works Planning (First Program)

Sec.

490.1 Definitions.
490.2 Purpose of the act.
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490.4 Apportionment of funds.
490.5 Submission of applications.
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490.10 Plan preparation.
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Subpart B—Advances for Public Works Planning (First, Second, and Third Programs): Determinations With Respect to Liability for Repayment of Advances

490.30 Purpose.
490.31 Definitions.
490.32 Repayment of advance.
490.33 Advance repayable in full.
490.34 Proportionate repayment of advance.
490.35 Advance not presently repayable.
490.36 Termination of liability.
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490.38 Termination of liability as result of Accelerated Public Works grant.

Subpart A—Advances for Public Works Planning (First Program)

AUTHORITY: The provisions of this Subpart A issued under sec. 501, 58 Stat. 791; 50 U.S.C. App. 1671, Reorg. Plan No. 17 of 1950, 15 F.R. 3177; 3 CFR, 1950 Supp.

NOTE: This program is now in Revolving Fund for Liquidating Programs (12 U.S.C. 1701g–1). All references in this part to "Administrator", "Administration", "Commissioner", etc. mean "the Secretary of Housing and Urban Development" (42 U.S.C. 3534).

§ 490.1 Definitions.

For the purpose of this subpart, the following terms shall be construed, respectively, to mean:

(a) *Act.* Title V of the act of Congress of October 3, 1944, entitled the "War Mobilization and Reconversion Act of 1944" (58 Stat. 791; 50 U.S.C. App., 1671) which provides for assistance to States and other non-Federal public agencies in the plan preparation of their proposed public works. The authority to make new loans or advances expired on June 30, 1947, under the provisions of section 603 of the War Mobilization and Reconversion Act of 1944, 58 Stat. 792.

(b) *Administrator.* The Housing and Home Finance Administrator, Housing and Home Finance Agency.

(c) *Administration.* The Community Facilities Administration, an organization unit within the Office of the Administrator, Housing and Home Finance Agency, which is authorized to administer the act.

(d) *Commissioner.* The Community Facilities Commissioner, Community Facilities Administration, Office of the Administrator, Housing and Home Finance Agency.

(e) *State.* Any one of the several States of the United States, the District of Columbia, Alaska, Hawaii, or Puerto Rico.

(f) *Public agencies.* The States and their agencies and political subdivisions established by law and which have basic authority to construct public works.

(g) *Applicant.* Any public agency which makes application for Federal Assistance under the act and this subpart.

(h) *Application.* The document or documents, including amendments and communications, filed with the Administration by the applicant for an advance of funds for plan preparation.

(i) *Plan preparation.* Architectural engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, estimates of costs, procedures and other planning activities in advance of the construction of specific public works.

(j) *Advances.* The Federal funds advanced under the authority of the act and this subpart to any public agency to aid in financing the cost of plan preparation.

(k) *Agreement.* The document executed by the applicant and the Administration covering the terms and conditions of an advance and the repayment thereof.

§ 490.2 Purpose of the act.

The act authorizes the Housing and Home Finance Administrator to make loans or advances to public agencies in order to encourage and to assist them in completing the plan preparation of useful public works, thereby developing a reserve of non-Federal public works which can be placed under construction with a minimum of delay as circumstances warrant.

§ 490.3 Advances.

(a) The act authorizes assistance in the form of loans or advances of Federal funds, but in order to simplify the administration of the act this subpart limits assistance to advances.

(b) The making of an advance does not in any way commit the Congress of the United States to appropriate funds to undertake any public works planned with the proceeds of such advance.

(c) The applicant in accepting an advance for plan preparation agrees that

it will not accept any loan from any Federal agency for the construction of the public work planned in whole or in part with such advance unless the making of such construction loan shall be specifically authorized by Federal law.

(d) An advance shall not be required to be repaid until the construction of the public work for which the advance is made is undertaken or started as provided in § 490.12. Until such construction is undertaken or started the advance shall not be deemed by the United States to be a debt or obligation within the meaning of any constitutional or statutory limitation.

(e) No interest charge shall be made for any advance.

(f) Advances shall not be approved to reimburse the applicant for any disbursement made or to defray any costs incurred prior to the approval of an application. Funds advanced shall not be used to defray the cost of any contract entered into by the public agency prior to the approval of the application for an advance if in such contract the public agency has agreed to finance the plan preparation from other funds.

(g) Funds advanced shall not be used for the acquisition of land or any interest in land.

§ 490.4 Apportionment of funds.

Funds appropriated for the making of advances under the act shall be apportioned among the several States in the following manner:

(a) Ninety percent in the proportion which the population of each State bears to the total population of all the States, as shown by the Federal census of 1940;

(b) States whose apportionments do not total one-half of 1 percent of the total amount appropriated for advances after the above distribution shall have their apportionments increased to that percentage from the 10 percent available for discretionary use; and

(c) The balance of the funds as may be determined by the Commissioner with the approval of the Administrator.

§ 490.5 Submission of applications.

Applications for advances for plan preparation shall be submitted to the Regional Offices of the Office of the Administrator, Housing and Home Finance Agency.

§ 490.6 Types of public works.

(a) Applications for advances for the plan preparation of the following types of public works of States and other non-Federal public agencies are eligible under the provisions of the act:

(1) Highways, roads and streets, for which other Federal funds are not legally available, which shall consist of highways, roads, and urban streets, including such items as culverts, drainage facilities, sidewalks, curbs and gutters, guard rails and guard walls, road and street lighting, traffic control facilities, roadside landscaping, and other similar work.

(2) Bridges, viaducts and grade separations, for which other Federal funds are not legally available, which shall consist of bridges, viaducts, grade separation structures, grade crossing eliminations, tunnels, and other similar work.

(3) Airports, for which other Federal funds are not legally available, which shall consist of all types of public airport buildings and landing facilities, including such items as terminal buildings, hangars, administration buildings, grading, leveling and seeding of land fields, construction of runways, taxi strips, aprons, landing platforms, seaplane ramps, drainage facilities, lighting facilities, airway markers and beacons, and other airport and airway facilities.

(4) Sewer, water, and sanitation facilities, which shall consist of sewer systems, including such items as sewage treatment and disposal plants, sanitary sewers, storm sewers, and drainage systems; water systems, including such items as water supply and storage, water treatment plants, pumping stations, water distribution and irrigation systems; and sanitary facilities such as incinerator plants, malarial control facilities, and other similar work.

(5) Schools and other educational facilities, which shall consist of public school facilities such as school buildings, administration buildings, auditoriums, gymnasiums, and dormitories; public libraries: and other educational facilities.

(6) Hospitals and health facilities, which shall consist of public hospitals, nurses' homes, clinics, health centers and laboratories, sanitariums and other health facilities.

(7) Other public buildings, which shall consist of city halls, courthouses, institutional buildings, administrative buildings, police and fire stations, armories, garages, storage buildings, community buildings, and other public buildings not included under subparagraphs (3), (5), (6), (8), and (9) of this paragraph.

(8) Parks and other recreational facilities, which shall consist of public parks, playgrounds, fairgrounds, and other recreational facilities, not included under subparagraph (5) of this paragraph, including such items as recreation centers, gymnasiums, athletic fields, swimming pools, tennis courts, and other such recreational facilities.

(9) Miscellaneous public facilities, which shall consist of other types of public facilities such as transportation facilities, port facilities, electric power plants, and distribution systems, public docks, wharves and piers, non-Federal river and harbor improvements, and other miscellaneous public facilities.

(b) The following types of public works are not eligible for assistance under the provisions of the act:

(1) Public housing projects of Federal, State or local housing agencies or authorities.

(2) Federal projects of Federal departments, agencies, and instrumentalities.

(3) Federal-aid and State highway projects of the Federal Public Roads Administration and the State Highway Departments.

§ 490.7 Conformity to over-all plan.

Each application for an advance for plan preparation shall contain evidence that the public work to be planned conforms to an over-all State, local or regional plan approved by competent State, local or regional authority. Where no legally authorized over-all planning agency exists, evidence of the approval of the proposed public work by the authority having jurisdiction thereof shall be required.

§ 490.8 Arrangements for construction.

Each application shall contain evidence that the applicant has basic legal authority to finance and construct the public works, and that it plans and reasonably expects to initiate the construction of the proposed public works within 4 years after the receipt of the advance and to prosecute the public works to completion.

§ 490.9 Agreements.

(a) An agreement between the applicant and the Service shall be executed for each advance on a form furnished by the Service. No payment on any advance shall be made by the United States unless and until such agreement has been executed.

(b) Subsequent to execution of the advance agreement, no change shall be made which will increase the amount of the advance of the Federal Government or alter its terms or conditions except upon agreement with the Service.

§ 490.10 Plan preparation.

(a) The applicant shall be responsible for the character, adequacy, and method of plan preparation, in accordance with acceptable professional practices, and upon the receipt of the initial payment shall take prompt steps to initiate and prosecute the plan preparation to completion.

(b) The applicant agrees that it will use the funds advanced only for the plan preparation for the public work for which the advance is made and that such plan preparation will be adequate and suitable for the purpose intended to be served by the advance.

(c) If the plan preparation is performed on a contractual basis, State or local regulations affecting employment within the professions involved shall be observed.

(d) If the applicant uses its own employees for the plan preparation, only those costs incurred by the applicant for the plan preparation which would not have been incurred except for such plan preparation shall be paid with the funds advanced.

§ 490.11 Payment to applicants.

Upon execution of the agreement a partial payment of the agreed advance may be made by the Administration to the applicant. Final payment shall not be made until the plan preparation has been completed and final costs determined. Any funds advanced which are

found to be in excess of the final costs incurred by the applicant in the plan preparation shall be promptly refunded.

§ 490.12 Repayment of advances.

Each advance shall be repaid in full without interest by the applicant when the construction of the public work for which the advance is made is undertaken or started. The construction shall be considered as undertaken or started when the first construction contract is awarded or the applicant begins construction with its own forces.

§ 490.13 Records and documents.

Applicants shall keep accurate accounting records of all costs involved in connection with plan preparation. The accounts and records of the applicants shall be open at all times to inspection by the authorized representatives of the Administration, and copies shall be furnished when requested. The applicant shall furnish the Administration a copy of any contract for architectural or engineering services for any other contract entered into in connection with plan preparation immediately upon execution thereof.

When requested by the Administration, the applicant shall furnish a report on the progress of plan preparation.

§ 490.15 Operating procedures and instructions.

The Commissioner is hereby authorized to issue such operating procedures and instructions not in conflict with Federal law or with this subpart as he may deem necessary for carrying out the provisions and effectuating the purposes of the act and this subpart, and all such operating procedures and instructions issued by him shall be and continue in full force and effect from the date on which issued or made effective until modified or revoked by him.

§ 490.16 Reports to the Administrator.

The Commissioner will submit to the Administrator a semi-annual report of operations under the act and such other special reports as he may request.

§ 490.17 Interest of member of or delegate to Congress.

No member of or delegate to Congress or resident commissioner, shall be admitted to any share or part of any agreement providing for the making of an advance, or to any benefit arising from any such agreement.

Subpart B—Advances for Public Works Planning (First, Second, and Third Programs): Determinations With Respect to Liability for Repayment of Advances

AUTHORITY: The provisions of this Subpart B issued under sec. 502, 62 Stat. 1283; 12 U.S.C. 1701c; and sec. 702; 40 U.S.C. 462.

§ 490.30 Purpose.

The regulations in this Subpart B prescribe standards forming the bases for determinations with respect to liability for repayment of a planning advance under the following programs:

(a) *Advances for Public Works Planning (First Program).* Title V of War Mobilization and Reconversion Act of 1944, as amended, 50 U.S.C. 1671.

(b) *Advances for Public Works Planning (Second Program).* Act of October 13, 1949, entitled "An Act to provide for the advance planning of non-Federal public works," as amended, 40 U.S.C. 451.

(c) *Advances for Public Works Planning (Third Program).* Section 702 of Housing Act of 1954, as amended, 40 U.S.C. 462.

§ 490.31 Definitions.

For the purpose of this subpart, the following terms shall be construed, respectively, to mean:

(a) *Administrator.* The Housing and Home Finance Administrator.

(b) *Applicant.* Any public agency or Indian tribe which has obtained a planning advance.

(c) *Final plans.* Final plans are based on preliminary planning and include preparation of all detailed plans and specifications required to award construction contracts and complete the project for its intended use.

(d) *Planning advance.* The Federal funds advanced under Title V of War Mobilization and Reconversion Act of 1944, as amended, 50 U.S.C. 1671, Act of October 13, 1949, as amended, 40 U.S.C. 451, or section 702 of Housing Act of 1954, as amended, 40 U.S.C. 462, to any public agency or Indian tribe to aid in financing the cost of plan preparation.

(e) *Planning agreement.* The document executed by the applicant and the United States of America covering the terms and conditions of a planning advance and the repayment thereof.

(f) *Proportionate payment.* Partial repayment of the planning advance accepted in full satisfaction of the obligation to repay under the law and planning agreement.

§ 490.32 Repayment of advance.

Each planning advance shall be repaid by the applicant without interest when the construction of the public work planned is undertaken or started: *Provided,* That in the event repayment is not made promptly, such unpaid sum shall bear interest at the rate of 4 per centum per annum from the date of the Administrator's demand for repayment to the date of payment.

§ 490.33 Advance repayable in full.

If the Administrator determines that a public work placed under construction is essentially the same as the public work planned with the Federal advance, the advance shall be repayable in full. An advance may be repayable in full even though there are some elements of dissimilarity, but these should be relatively minor and few in relation to the total scope of the project. An advance for preparation of final plans shall be repayable in full regardless of the number of minor changes provided the scope or size of the project constructed is approximately the same as that of the project planned.

§ 490.34 Proportionate repayment of advance.

(a) If the Administrator determines that construction of only a portion of a planned project or of a separate segment of a planned project has been undertaken, a proportionate repayment of the advance shall be due. The Administrator will determine the amount of such proportionate repayment by making a comparison of the project planned with the advance to the project placed under construction. Such comparison shall take into consideration project type and scope and include such factors as specifications, cost estimates, drawings, planning surveys, site location, subsurface studies, and area served. This § 490.34(a) shall not be construed to supersede any agreement executed under the Third Advance Planning Program providing for a schedule of repayment under other terms.

(b) If the Administrator determines that a proportionate repayment of the advance is due and that there is no reasonable likelihood that the remaining portions of the planned project will be placed under construction, liability for replayment of such remaining portion shall be terminated as provided under § 490.36. If the Administrator determines that there is a reasonable likelihood that such remaining portion will be placed under construction at a future date, liability for repayment of such portion shall be continued.

§ 490.35 Advance not presently repayable.

If the Administrator determines that construction of a project planned has not been undertaken or started but that there is reasonable likelihood that such construction will be undertaken or started in the future, no change shall be made in the status of the advance.

§ 490.36 Termination of liability.

(a) If the Administrator determines that there is no reasonable likelihood that the public work, or a portion of the public work, planned with an advance will be constructed, all or a portion of the liability for repayment of such advance shall be terminated. This determination shall take into consideration, among other things, such factors as significant changes in population, technology, community needs, and governmental organizational structure of the applicant which would obviate the need for or diminish the usefulness of the planned project.

(b) If the Administrator determines that there is no reasonable likelihood that the public work, or any portion of the public work, planned with an advance will be constructed, liability for repayment of the entire advance shall be terminated.

(c) If the Administrator determines that a proportionate repayment of an advance is due and that liability for repayment as to the remainder shall be terminated, such determination shall be based on the considerations set forth under § 490.34.

(d) If no construction has been undertaken and the Administrator determines that there is no reasonable likelihood that the entire public work planned will be constructed, but that there is reasonable likelihood that a portion thereof may be undertaken or started in the future, liability for repayment shall be terminated in part and shall continue as to the remainder.

§ 490.37 Termination of agreement.

If the Administrator determines in accordance with § 490.36 that there is no reasonable likelihood that the public work, or any portion of the public work, planned with an advance will be constructed, the agreement for such advance will be terminated.

§ 490.38 Termination of liability as result of Accelerated Public Works grant.

If construction of a public work planned with an advance made under the Third Advance Planning Program is initiated as a result of a grant-in-aid under the Public Works Acceleration Act, P.L. 87-657, 76 Stat. 541, there shall be no liability for repayment of such advance, under subsection 702(g) of the Housing Act of 1954, as added by section 6 of the Public Works Acceleration Act. If the Administrator determines that only a portion of the planned project has been constructed as a result of the grant-in-aid assistance, a proportionate amount of the liability shall be terminated. The determination as to the amount of liability to be terminated shall be based upon the proportion that the scope of the Accelerated Public Works project as reflected in the approved application therefor bears to the scope of the project planned under the Third Advance Planning Program.

PART 491—GRANTS FOR ADVANCE ACQUISITION OF LAND

Sec.
491.1 Definitions.
491.2 Grants for advance acquisition of land.
491.3 Amount of grant.
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491.7 Eligibility of land for other Federal assistance.
491.8 Information, application forms, and applications.

AUTHORITY: The provisions of this Part 491 issued under sec. 7(d), 79 Stat. 670, sec. 705(a), 79 Stat. 492; 42 U.S.C. 3535(d), 42 U.S.C. 3105(a).

NOTE: Now in Revolving Fund for Liquidating Programs (12 U.S.C. 1701g-5).

§ 491.1 Definitions.

(a) "Local public bodies and agencies" means any public corporate bodies or political subdivisions; public agencies or instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States); Indian tribes; or boards or commissions established under the laws of any State to finance specific capital improvement projects.

(b) "Public purposes" includes the construction of public works and facilities; retention of land as open space to be utilized for recreation, conservation, scenic, or historic preservation purposes; and other purposes recognized as public under applicable State law, subject to such limitations as the Secretary may establish.

(c) "Secretary" means the Secretary of Housing and Urban Development, or an officer authorized to perform the functions of the Secretary.

(d) "Section 704" means section 704 of the Housing and Urban Development Act of 1965 (Public Law 89-117), as amended by section 603 of the Housing and Urban Development Act of 1968 (Public Law 90-448), 42 U.S.C. 3104.

(e) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 491.2 Grants for advance acquisition of land.

Grants may be made to States and local public bodies and agencies to assist in financing the acquisition of a fee simple estate or other interest in land planned to be utilized in the future for public purposes.

§ 491.3 Amount of grant.

The amount of any grant may not exceed the aggregate amount of reasonable interest charges on the loans or other financial obligations incurred by a State or local public body or agency to finance the acquisition of such land for a period not exceeding the lesser of (a) 5 years from the date of acquisition of such land, or (b) the period of time between the date on which the land was acquired and the date its use begins for the purpose for which it was acquired. If all or any portion of the cost of the land is not financed through borrowings, the amount of the grant shall be computed on the basis of the aggregate amount of reasonable interest charges that the Secretary determines would have been required.

§ 491.4 Requirements for assistance.

(a) Grant assistance will be made available only if the Secretary determines that:

(1) The land is planned to be utilized for a public purpose within 5 years after the date on which the contract to make such grant was entered into (unless the Secretary determines that due to unusual circumstances a longer period of time is necessary and in the public interest and reports such determination to the Committees on Banking and Currency of the Senate and House of Representatives); and

(2) The utilization of the land for the public purpose will contribute to economy, efficiency, and the comprehensively planned development of the area.

(b) Grant assistance will be made available only if the applicant possesses adequate legal authority to finance the acquisition of the land, and demonstrates that the land will be utilized for the anticipated public purpose within a reasonable period of time (as required by paragraph (a)(1) of this section).

§ 491.5 Diversion of land; repayment of grant.

(a) Land acquired with assistance under section 704 may not be diverted from the purpose originally approved without the approval of the Secretary. No such diversion may be approved unless the Secretary finds that it is in accord with the then applicable comprehensive plan for the area. In cases of diversion of land to other than a public purpose, the Secretary may require repayment of the grant or substitution of land of approximately equal fair market value, whichever he deems appropriate.

(b) An interim use of the land for a public or private purpose in accordance with standards prescribed by the Secretary, or approved by him, shall not constitute a diversion within the meaning of this section.

§ 491.6 Application of other Federal laws.

(a) Grants authorized by section 704 are subject to provisions of:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d—2000d—4, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance; and

(2) Title IV of the Housing and Urban Development Act of 1965, as amended, 42 U.S.C. 3071-3074, which requires that, as a condition of eligibility for assistance under section 704, the applicant will follow certain prescribed policies in the acquisition of real property, and also provides policies to be followed for the relocation of individuals and businesses displaced by the assisted land acquisition.

(b) An applicant for grant assistance under section 704 will be required to furnish satisfactory assurance that it will comply with the requirements and policies referred to in paragraph (a) of this section.

§ 491.7 Eligibility of land for other Federal assistance.

No land acquired with assistance under section 704 shall, solely as a result of such advance acquisition, be considered ineligible for the purpose of any other Federal loan or grant program. The amount of the purchase price paid for the land by the recipient of a grant under section 704 may be considered an eligible cost for the purpose of such other Federal loan or grant program.

§ 491.8 Information, application forms, and applications.

Information and application forms may be obtained from, and applications may be submitted to, the Regional Office of the Department of Housing and Urban

Development which serves the area in which the applicant is located.

Chapter V—Office of Assistant Secretary for Community Development

Subchapter A—Slum Clearance and Urban Renewal

Part
500 Renewal assistance.

Subchapter B—Open-Space Land

540 Open-space land.

Subchpater C—Community Facilities

550 Neighborhood facilities.
555 Grants for basic public water and sewer facilities.
556 Evaluation of preliminary applications for basic water and sewer facilities grants.

SUBCHAPTER A—SLUM CLEARANCE AND URBAN RENEWAL

PART 500—RENEWAL ASSISTANCE

Subpart A—Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs

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AUTHORITY: The provisions of this Part 500 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

Subpart A—Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs

§ 500.1 Definitions.

(a) Title I of the Housing Act of 1949 (63 Stat. 414, 42 U.S.C. 1450) authorizes the Secretary of Housing and Urban Development to finance the undertaking of local programs designed for the elimination and prevention of slums and blight, including slum clearance and urban renewal, rehabilitation, code enforcement, and demolition.

(b) The terms used herein shall have the meanings attributed to them in section 110 of the Housing Act of 1949, as amended, 42 U.S.C. 1460.

§ 500.2 General policies and procedures.

Title I of the Housing Act of 1949, as amended, authorizes the Secretary of Housing and Urban Development to provide localities with Federal technical and financial assistance through a number of programs designed for the elimination and prevention of slums and blight and the removal of factors that create slums and blighting conditions. Applications for grants, loans, and advances should be filed with the Regional or Area Office which serves the locality seeking assistance. The Regional and Area Offices of the Department of Housing and Urban Development provide forms for making application for Federal aid, furnish information and assistance, receive completed applications, and notify recipients of the approval of such applications.

§ 500.3 Urban renewal projects and neighborhood development programs.

(a) The renewal and revitalization of urban areas can be accomplished through the use of two different methods, urban renewal projects or neighborhood development programs.

(b) Urban renewal projects are carried out in individual blighted areas. Neighborhood development programs deal with one or more urban renewal areas which are to be treated simultaneously. Urban renewal projects are planned and funded as one unit; neighborhood development programs are to be funded in annual increments with the Government having the right to terminate at the end of any year.

(c) Urban renewal projects and neighborhood development programs are planned and executed by local public agencies which, depending on State law, may be separate urban renewal agencies, local housing authorities, or departments of local governments. To qualify for Federal assistance to an urban renewal project or a neighborhood development program, a community must adopt, and have certified by the Secretary of Housing and Urban Development, a workable program for community improvement designed to eliminate blight and prevent its recurrence. In addition, a local public agency must make a showing that there is a feasible method for the temporary relocation of the individuals and families displaced from the urban renewal areas to be treated and must assure the Secretary that there are, or are being provided, sufficient units of decent, safe, and sanitary relocation housing in comparable areas at reasonable rents. The policies and procedures applicable to urban renewal projects are set forth in the Urban Renewal Handbook (RHA 7200 through RHA 7228) and those applicable to neighborhood development programs in the Neighborhood Development Program Handbook, RHA 7380 through RHA 7389.

(d) An urban renewal project or a neighborhood development program assisted under title I may include, in accordance with the urban renewal plan for the area, acquisition of land, site clearance, installation of streets, utilities, parks, playgrounds, and other improvements, restoration and relocation of structures of historic or architectural value, carrying out plans for programs of code enforcement, voluntary repair and rehabilitation of buildings or other improvements, and disposition of acquired land.

(e) The Secretary is authorized to make relocation grants to local public agencies to reimburse them for payments to individuals, families, and businesses for their reasonable and necessary moving expenses, for any direct loss of property resulting from their displacement from an urban renewal area, and for related payments. The regulations governing such payments may be found at § 500.100 et seq.

(f) The Secretary is authorized to make an advance of funds to a local public agency (1) for survey and planning work for a project, (2) to determine the feasibility of the undertaking of a project or program, and (3) for a General Neighborhood Renewal Plan outlining the urban renewal activities proposed in an area which is of such size that the activities may have to be initiated and carried out in stages.

(g) For an urban renewal project, the Secretary is authorized to make one or more temporary loans to be used by the local public agency as working capital in acquiring real estate, clearing sites and preparing the project area for redevelopment, conservation and/or rehabilitation. For a neighborhood development program, the Secretary is authorized to make temporary loans for use by the local public agency for such program activities as are to be carried out during an annual increment of the program.

(h) The Secretary is authorized to make one or more definitive loans to the

local public agency, for a period not exceeding 40 years, when project land is leased rather than sold to a redeveloper. A definitive loan must be amortized from the rental income derived from the land.

(i) The Secretary is authorized to make one or more capital grants to a local public agency not exceeding two-thirds of the net project or program cost except that a capital grant may be made not exceeding three-fourths of the net project or program cost (1) where the project is located in a municipality with a population of 50,000 or less, or (2) where the project is situated in an officially designated redevelopment area. A three-fourths grant is also available for an urban renewal project (but not one that is included in a neighborhood development program) where the net project cost excludes the costs of survey, planning, administrative, legal, and certain other expenses. For a neighborhood development program, the capital grant is paid annually for the Government's share of expenses for the year.

(j) The local contribution toward the cost of the project or program may be made in the form of cash or noncash grants-in-aid, such as donations of land, demolition and removal work, project improvements, historic preservation activities, certain expenditures by colleges, universities and hospitals, or public facilities that benefit the project.

(k) Application for financial assistance for an urban renewal project may be made by local public agencies on Form HUD-6100, Survey and Planning Application, and Form HUD-612, Application for Loan and Grant. A neighborhood development program application may be made on Form HUD-6270, Application for a Neighborhood Development Program.

§ 500.4 Code enforcement programs.

The Secretary is authorized to make a grant of not exceeding two-thirds (or three-fourths in the case of a municipality having a population of 50,000 or less) of the cost of carrying out programs of concentrated code enforcement in deteriorated or deteriorating areas in which such enforcement, together with those public improvements to be provided by the locality, may be expected to arrest the decline of the area. Eligible code enforcement activities may include the provision and repair of necessary streets, curbs, sidewalks, street lighting, tree planting, and similar improvements within such areas. Prior to execution of a contract for a code enforcement grant, the municipality must have a workable program for community improvement currently in effect, must assure that any individuals or families displaced by the code enforcement activities are offered decent, safe, and sanitary housing within their means, and must provide relocation assistance and relocation payments on the same basis as in urban renewal project activities. The policies and procedures applicable to code enforcement programs are set forth in the Code Enforcement Grant Handbook, RHA 7250. Application for financial assistance for a code enforcement grant may be made by cities, other municipalities, and counties on Form HUD-6170, Application for Code Enforcement Grant, and Form HUD-6170A, Application for Code Enforcement Grant—Area Data.

§ 500.5 Demolition programs.

The Secretary is authorized to make a grant of not exceeding two-thirds of the cost of demolishing structures which under State or local law have been determined to be structurally unsound, a harborage or potential harborage of rats, or unfit for human habitation. If the structures to be demolished are not in an urban renewal area; (a) the locality involved must have a currently certified workable program for community improvement and the structures to be demolished must constitute a serious hazard to the public health or welfare, (b) the demolition must be on a planned neighborhood basis and further the overall renewal objectives of the locality, (c) a program of enforcement of existing local housing and related codes must be currently underway in the locality, and (d) the governing body of the municipality must determine that other available legal procedures to secure remedial action by the owners of the structures involved have been exhausted and that demolition by governmental action is required. The locality will be obligated to assure that any individuals or families displaced as a result of the federally assisted demolition are offered decent, safe, and sanitary housing. Relocation payments must be made available on the same basis as in urban renewal project activities. The policies and procedures applicable to the demolition program are set forth in the Demolition Grant Handbook, RHA 7300. Cities, other municipalities, and counties seeking financial assistance under this program may obtain information and forms from the Regional Office which serves the locality seeking assistance.

§ 500.6 Rehabilitation grants.

The Secretary may authorize a local public agency to make grants (and an urban renewal or code enforcement project, or neighborhood development program may include the making of such grants) to individuals and families owning and occupying real property which is in urban renewal areas, areas certified by the locality to contain a substantial number of structures in need of repairs and improvements, or areas of concentrated code enforcement, or real property which is determined to be uninsurable because of physical hazards after an inspection pursuant to a statewide insurance plan approved by the Secretary under title XII of the National Housing Act. Such grants are to cover the cost of repairs and improvements necessary to make such real property conform to public standards for decent, safe, and sanitary housing as required by applicable codes and other requirements of the urban renewal plan for the area. For an individual whose annual income does not exceed $3,000, a grant is limited to the lesser of $3,000 or the actual cost of the repairs and improvements involved. Where the annual income of the individual or family exceeds $3,000, the amount of the grant is further limited to an amount not exceeding that portion of the cost of repairs and improvements which cannot be paid for with any available loan that can be amortized as part of the applicant's monthly housing expense without requiring that expense to exceed 25 percent of the applicant's monthly income. Local public bodies may include requests for rehabilitation grant assistance in their applications for assistance for an urban renewal or code enforcement project, neighborhood development program or certified area project. Individuals eligible for financial assistance under this program may request and file Form HUD-6260 with the local public body authorized to carry out the project or program involved.

§ 500.7 Interim assistance grants.

(a) The Secretary is authorized to make grants not exceeding two-thirds (or three-fourths in the case of a locality having a population of 50,000 or less) for a program of interim assistance in the alleviation of harmful conditions in slum or blighted areas which are planned for substantial clearance, rehabilitation or Federally assisted code enforcement in the near future. This program may include: (1) The repair of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings to meet needs consistent with the short-term continued use of the area prior to the undertaking of contemplated clearance or upgrading activities, (2) the improvement of private properties to the extent needed to elimnate the most immediate dangers to public health and safety, (3) the demolition of structures determined to be structurally unsound or unfit for human habitation and which constitute a public nuisance and serious hazard to the public health and safety, (4) the establishment of temporary public playgrounds on vacant land within the area, and (5) the improvement of garbage and trash collection, street cleaning and similar activities.

(b) To be eligible for interim assistance; (1) the locality must have a currently certified workable program for community improvement, and (2) the locality must make a showing that there is a feasible method for the temporary relocation of the individuals and families displaced due to activities under an interim assistance program and must assure the Secretary that there are, or are being provided, sufficient units of decent, safe, and sanitary relocation housing in comparable areas at reasonable rents.

§ 500.8 Community renewal programs.

(a) The Secretary is authorized to make grants not exceeding two-thirds of the total cost of preparing a community renewal program including: (1) Identification of blighted or deteriorating areas in the community, (2) measurement of the nature and degree of blight

and blighting factors in the areas, (3) determination of the financial, relocation and other resources needed to renew the areas, (4) identification of potential project areas and types of urban renewal action contemplated, and (5) scheduling of urban renewal activities.

(b) Application for financial assistance under this program may be made by a local public body authorized to perform the necessary planning work on Form HUD-6400, Application for Community Renewal Program Grant. The policies and procedures applicable to community renewal programs are set forth in the Community Renewal Program Handbook, RHA 7230.

§ 500.9 Applications; information.

(a) A local public agency (or a city, other municipality, or county in the case of a code enforcement, demolition grant, or interim assistance program) applying for financial assistance should submit its application and all related documents to the Regional Administrator in the appropriate HUD Regional Office. Application forms and other forms, procedures, policy statements, and materials issued by HUD for the use or guidance of local public agencies may be obtained through such offices.

(b) The Urban Renewal Handbook, which sets out policies and requirements for local public agencies, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 and is available for use in the HUD Information Center, 451 Seventh Street SW., Washington, D.C. 20410, and in the information centers of the various HUD Regional Offices.

(c) Also available in each of the information centers are: (1) Community Renewal Program Handbook, (2) Code Enforcement Grant Handbook, (3) Demolition Grant Handbook, and (4) Neighborhood Development Program Handbook.

Subpart B—Relocation Payments

§ 500.100 Statement of applicable law.

Section 305 of the Housing Act of 1956 (70 Stat. 1100, 42 U.S.C. 1456) amended title I of the Housing Act of 1949, as amended, by adding a new section 106(f), which provided that title I urban renewal projects may include the making of relocation payments subject to rules and regulations prescribed by the Housing and Home Finance Administrator. Section 106(f) was amended by section 304 of the Housing Act of 1957 (71 Stat. 300), section 409 of the Housing Act of 1959 (73 Stat. 673), and section 304 of the Housing Act of 1961 (75 Stat. 167). Section 310 of the Housing Act of 1964 amended title I by adding a new section 114 (78 Stat. 788, 42 U.S.C. 1465) and incorporated therein, with additional provisions, the former section 106(f) of title I, which was repealed (42 U.S.C. 1456 (f)). Section 311(a) of the Housing and Urban Development Act of 1965 amended title I by adding a new section 117 (79 Stat. 478, 42 U.S.C. 1468), providing for grants for programs of code enforcement and providing that the provisions of section 114 shall be applicable to such programs. Section 404(a) of the Housing and Urban Development Act of 1965 (79 Stat. 486, 42 U.S.C. 3074) provided that the provisions of section 114 of title I were applicable to all federally assisted development programs. Section 514 of the Housing and Urban Development Act of 1968 (82 Stat. 525, 42 U.S.C. 1468a) amends title I by adding a new section 118, providing for grants for programs of interim assistance for slums and blighted areas and providing that the provisions of section 114 of title I shall be applicable to all activities assisted pursuant to section 118 to the same extent as if such activities were being carried out as part of an urban renewal project. Section 516 of the Housing and Urban Development Act of 1968 (82 Stat. 526, 42 U.S.C. 1465(c)) amends section 114(c) by expanding the relocation payments provisions applicable to the programs of the Department.

§ 500.101 Definitions.

For the purpose of the regulations in this subpart, the following terms shall mean:

(a) *Actual direct loss of property.* Actual loss in the value of the property (exclusive of goods or other inventory kept for sale) sustained by the site occupant by reason of the disposition or abandonment of the property resulting from the site occupant's displacement. A loss resulting from damage to the property while being moved is not included.

(b) *Agency.* (1) In an urban renewal area, the LPA, (2) in a code enforcement area or demolition grant area, the code agency, or (3) in an area receiving interim assistance, the city, other municipality, or county.

(c) *Business concern.* A corporation, partnership, individual, or other private entity, including a nonprofit organization, engaged in some type of business, professional, or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession, or institution.

(d) *Code agency.* A city, other municipality, or county authorized to engage in code enforcement activities in the locality.

(e) *Code enforcement.* Structural or other substantial repairs to, or alterations of, any building or other improvement on land, the demolition of any building or improvement, or a reduction in the number of occupants of, or any other change in the use of, any parcel of real property, pursuant to the requirements of, or to comply with a notice by a municipality of enforcement of, a zoning, building, or other municipal code or ordinance.

(f) *Code enforcement area.* An area which HUD has approved under section 117 of Title I for a program of concentrated code enforcement and public improvements.

(g) *Demolition grant area.* An area which HUD has approved under section 116 of Title I for a program of demolition of structures which are structurally unsound or unfit for human habitation.

(h) *Family.* Two or more persons related by blood, marriage, or adoption, who are living together in a single dwelling unit.

(i) *Federal financial assistance contract.* (1) A contract for a loan, a grant, or a loan and grant, between the Federal Government and the LPA for an urban renewal project, executed on or after August 7, 1956; or

(2) A contract for a grant for a program of concentrated code enforcement and public improvements between the Federal Government and the code agency; or

(3) A contract for a grant for the demolition of unsafe structures between the Federal Government and the code agency;

(4) A contract for a grant for interim assistance to slums or blighted areas between the Federal Government and the city, other municipality, or county.

whichever is pertinent in the context.

(j) *HUD.* (1) Prior to November 9, 1965, the Housing and Home Finance Administrator; or (2) on and after November 9, 1965, the Housing and Home Finance Administrator in the Department of Housing and Urban Development pending appointment of the Secretary of Housing and Urban Development, and thereafter the Secretary of Housing and Urban Development; or (3) an employee duly authorized to perform the functions of such Administrator or Secretary.

(k) *Individual.* A person who is not a member of a family. An elderly individual is an individual 62 years of age or over at the time of displacement. A handicapped individual is an individual who has a physical impairment which is expected to be of long-continued and indefinite duration and which substantially impedes his ability to live independently.

(l) *LAP.* A Local Public Agency authorized to undertake an urban renewal project being assisted under Title I.

(m) *Moving expenses.* (1) *Individuals and families.* Costs of packing, storing (for a period of 1 year or less), carting, and insuring of property and incidental costs of disconnecting and reconnecting household appliances.

(2) *Business concerns.* Costs of dismantling, crating, storing (for a period of 1 year or less), transporting, insuring, reassembling, reconnecting, and reinstalling of property (including goods or other inventory kept for sale), exclusive of the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting such reassembly, reconnection, or reinstallation.

(n) *Property.* Tangible personal property, excluding fixtures, equipment, and other property which under State or local law are considered real property, but including such items of real property as the site occupant may lawfully remove.

(o) *Public body.* A State, county, municipality, or other political subdivision, or an authority or agency which is a public legal entity.

(p) *Relocation payment.* A payment by an Agency:

(1) To an individual or family, for reasonable and necessary moving expenses and any actual direct loss of property (for which reimbursement or compensation is not otherwise made);

(2) To a business concern for its reasonable and necessary moving expenses and any actual direct loss of property except goodwill or profit (for which reimbursement or compensation is not otherwise made);

(3) To a small business concern, for its displacement (small business displacement payment);

(4) To or on behalf of a family or elderly individual for relocation adjustment prior to August 1, 1968 (relocation adjustment payment); or to or on behalf of a family or elderly or handicapped individual on or after August 1, 1968 (additional relocation payment).

(5) To an individual, family, or business concern for settlement costs (for which reimbursement or compensation is not otherwise made).

(6) To a family or individual to assist an owner-occupant of a one- or two-family dwelling in the purchase and occupany of a replacement dwelling on or after August 1, 1968 (replacement housing payment).

(q) *Settlement costs.* (1) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the Agency;

(2) Penalty costs for prepayment of any mortgage encumbering such real property; and

(3) The pro rata portion of real property taxes allocable to a period subsequent to the date of vesting of title, or the effective date of the acquisition of such real property by the Agency, whichever is earlier.

(r) *Site occupant.* A family, individual, or business concern, as defined above.

(s) *Small business concern.* A business concern (other than a nonprofit organization) which during the base period had:

(1) Average annual net earnings before income taxes of less than $10,000; and

(2) In the case of displacements prior to June 15, 1966, average annual gross receipts or sales in excess of $1,500; or in the case of displacements on and after June 15, 1966, average annual gross receipts or sales in excess of $1,500 together with average annual net earnings before income taxes in excess of $500, or average annual gross receipts or sales in excess of $2,500.

Earnings for the purpose of this paragraph(s) include salaries, wages, or other compensation received by an owner of the concern or any member of his household related to him. The term "owner" as used in the previous sentence includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by HUD.

(t) *Title I.* Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 et seq.).

(u) *Urban renewal area.* An area which HUD has approved for an urban renewal project.

(v) *Urban renewal plan.* A duly approved plan, as it exists from time to time, for an urban renewal project.

(w) *Urban renewal project.* Undertakings and activities of an LPA in an urban renewal area for the elimination and prevention of the development or spread of slums or blight as defined in Title I.

(x) *Voluntary rehabilitation.* Structural or other substantial repairs to, or alterations of, any building or other improvement on land within an urban renewal area, undertaken by an owner of any interest in such real property, in order to conform to the property rehabilitation standards set forth in the urban renewal plan.

(y) *Base period.* The 2 tax years immediately preceding displacement (or, if the business concern is not in business that long, such other period as may be approved by HUD): *Provided,* That if a business concern does not qualify as a small business concern under paragraph (s) (ii) of this section based upon the 2 tax years immediately preceding displacement and the Agency finds that its business activity during such period was not representative, the base period shall be the third and fourth tax years immediately preceding displacement.

(z) *Interim assistance area.* An area which HUD has approved for a grant designed to assist the locality in carrying out programs to alleviate harmful conditions in slums or blighted areas, as provided for in section 118 of title I (42 U.S.C. 1468a).

§ 500.102 Relocation payments by the Agency.

The Agency shall make relocation payments to or on behalf of eligible site occupants in accordance with and to the full extent permitted by the regulations in this subpart: *Provided,* That for each Federal financial assistance contract the Agency may elect whether to make payments for moving expenses in excess of $25,000 in accordance with § 500.103 (a) (2).

§ 500.103 Basic eligibility conditions—displacement from an urban renewal area.

(a) *Displacement.* A site occupant is eligible for a relocation payment if the displacement of the site occupant is:

(1) From real property within the urban renewal area, on or after the date of execution of the pertinent Federal financial assistance contract, or the date of HUD approval of a budget for project execution activities resulting in the displacement (provided that in the latter case a Federal financial assistance contract for such contemplated project is thereafter executed); and

(2) Made necessary by (i) the acquisition of such real property by the LPA, or any other public body, or (ii) code enforcement activities undertaken in connection with the urban renewal project, or (iii) a program of voluntary rehabilitation of buildings or other improvements in accordance with the urban renewal plan, as further defined in paragraphs (b) and (c) of this section.

(b) *Displacement made necessary by acquisition.* A site occupant of the property on the date of execution of a Federal financial assistance contract (or HUD concurrence, prior to its approval of an Application for Loan and Grant, in the commencement of a project execution activity) which contemplates acquisition of the property, regardless of when or if such acquisition takes place, and a site occupant of the property at the time of its acquisition may be deemed displaced by the acquisition upon vacating the property. For this purpose, acquisition means the obtaining by the LPA or other public body of title to, or the right to possession of, the real property. This paragraph (b) shall apply to a site occupant displaced on or after January 27, 1964, but shall not affect adversely, in the case of a site occupant displaced prior to January 13, 1965, eligibility established in accordance with regulations in effect at the time of the site occupant's displacement.

(c) *Displacement made necessary by code enforcement or voluntary rehabilitation.* The vacating by the site occupant of the real property after the happening of any of the following events shall be deemed to be a displacement from the urban renewal area made necessary by code enforcement or voluntary rehabilitation, as the case may be:

(1) In the case of voluntary rehabilitation, the commencement of, or notice by the owner of the real property of the commencement of, voluntary rehabilitation of the building or other improvement, or the part thereof, occupied by the site occupant which makes it necessary (as determined by the LPA) for the site occupant to vacate the real property.

(2) In the case of code enforcement, the commencement of, or notice by the code agency of, code enforcement, with respect to the real property, or the part thereof, occupied by the site occupant which makes it necessary (as determined by the LPA) for the site occupant to vacate the real property.

(3) In the case of either voluntary rehabilitation or code enforcement, an increase, or a notice of increase, in rent for the rent period involved amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the LPA for displacees' ability to pay.

(d) *Small business displacement payment.* A small business concern which satisfies the eligibility conditions of paragraph (a) of this section is eligible for

a small business displacement payment if the concern:

(1) Is displaced on or after January 27, 1964;

(2) Is not part of an enterprise having two or more establishments outside the urban renewal area;

(3) Has filed with the Internal Revenue Service income tax returns for the base period; or has furnished such other evidence of earnings as may be approved by HUD; and

(4) Was doing business in the urban renewal area on the date of the approval by the governing body of the locality of an urban renewal plan: *Provided,* That if the displacement occurs pursuant to a Federal financial assistance contract in accordance with the third sentence of section 102(a) of Title I (Early Land Acquisition Loan), the applicable date shall be the date of the approval by the governing body of the locality of an application for such contract, and if the displacement occurs pursuant to HUD approval of a budget for project execution activities, the applicable date shall be the date of the resolution by the LPA requesting HUD approval of such project execution activities.

(e) *Outdoor advertising display.* A business concern which is not displaced from an urban renewal area shall be eligible for a relocation payment for moving expenses incurred on or after September 2, 1964, with respect to its outdoor advertising displays required in the determination of the LPA to be removed from the urban renewal area.

(f) *Temporary on-site moves.* No relocation payment shall be made to a site occupant for a temporary move within the urban renewal area.

§ 500.103a Basic eligibility conditions—displacement from a code enforcement or demolition grant area.

(a) *Displacement.* A site occupant is eligible for a relocation payment if the displacement is:

(1) From real property within the code enforcement or demolition grant area on or after (i) the date of execution of a Federal financial assistance contract, or (ii) the date of HUD approval of a budget for a program of concentrated code enforcement, or (iii) the date of HUD approval of an application for a demolition grant: *Provided,* That in the case of approval of such budget or application a Federal financial assistance contract is thereafter executed for the area; and

(2) Made necessary by (i) code enforcement activities, as further defined in paragraph (b) of this section, (ii) acquisition of real property by the code agency or any other public body in connection with a federally assisted program of concentrated code enforcement and public improvement as further defined in paragraph (c) of this section, or (iii) demolition activities as further defined in paragraph (d) of this section.

(b) *Displacement made necessary by code enforcement.* The displacement of a site occupant from a code enforcement area is deemed made necessary by code enforcement if the vacation of the real property occurs on or after the commencement of code enforcement, or the receipt of notice by the site occupant that code enforcement will be required, with respect to the real property occupied by the site occupant under either of the following circumstances:

(1) The code enforcement cannot reasonably be undertaken without the vacation of the real property by the site occupant and the code agency so determines in accordance with § 500.104(e)(2); or

(2) In the case of a tenant, the owner has increased the rent, or has notified the tenant of an increase in rent, amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family:

Provided, That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the code agency for displacees' ability to pay.

(c) *Displacement made necessary by acquisition.* The displacement of a site occupant from a code enforcement area is deemed made necessary by acquisition if the vacation of the real property occurs after the code agency or other public body acquiring legal or equitable title or the right to possession has ordered the site occupant to vacate the real property.

(d) *Displacement made necessary by demolition.* The displacement of a site occupant from a demolition grant area is deemed made necessary by demolition if the vacation of the real property occurs after the code agency has ordered the real property to be vacated and demolished.

(e) *Small business displacement payment.* A small business concern which satisfies the eligibility conditions of paragraph (a) of this section is eligible for a small business displacement payment if the concern:

(1) Is not part of an enterprise having two or more establishments outside the code enforcement or demolition grant area;

(2) Satisfies the requirements of § 500.103(d)(3) governing evidence of earnings; and

(3) Was doing business in the code enforcement or demolition grant area on the date of approval by the code agency of an application for a Federal financial assistance contract for the area.

(f) *Outdoor advertising display—code enforcement area.* A business concern which is not displaced from a code enforcement area shall be eligible for a relocation payment for moving expenses with respect to its outdoor advertising displays required, in the determination of the code agency, to be removed from the code enforcement area by the acquisition of real property in connection with a federally assisted program of concentrated code enforcement and public improvements.

(g) *Temporary on-site moves.* No relocation payment shall be made to a site occupant for a temporary move within the code enforcement or demolition grant area.

§ 500.103b Basic eligibility conditions—displacement from an area receiving interim assistance.

(a) *Displacement.* A site occupant is eligible for a relocation payment if the displacement is:

(1) From private real property within the interim assistance area on or after the date of execution of a Federal financial assistance contract or the date of HUD approval of a budget for a program of interim assistance: *Provided,* That in the latter case a Federal financial assistance contract is thereafter executed for the area; and

(2) Made necessary by (i) activities designed to improve private properties to the extent needed to eliminate the most immediate dangers to the public health and safety, as further defined in paragraph (b) of this section, (ii) acquisition of real property by the Agency in connection with a federally assisted program of improvement of private properties, as further defined in paragraph (c) of this section, or (iii) demolition of structures determined to be structurally unsound or unfit for human habitation, and which constitute a public nuisance and serious hazard to the public health and safety, as further defined in paragraph (d) of this section.

(b) *Displacement made necessary by improvement of private properties.* The displacement of a site occupant from an interim assistance area is deemed made necessary by improvement of private properties if the vacation of the private real property occurs on or after the commencement of improvement activities, or the receipt of notice by the site occupant that improvements will be required with respect to the private real property occupied by the site occupant, and if:

(1) The improvement is necessary to eliminate the most immediate dangers to public health and safety and the Agency so determines, and the improvement cannot reasonably be undertaken without the vacation of the real property by the site occupant and the Agency so determines in accordance with § 500.104(e)(3); or

(2) In the case of a tenant, the owner has increased the rent, or has notified the tenant of an increase in rent, amounting to not less than 25 percent in the case of a business concern and not less than 10 percent in the case of an individual or family: *Provided,* That in the case of an individual or family the increase shall also result in a rent exceeding the standards established by the city, other municipality, or county for displacees' ability to pay.

(c) *Displacement made necessary by acquisition.* The displacement of a site occupant from an interim assistance area is deemed made necessary by acquisition if the vacation of the real property occurs after the Agency has acquired legal or equitable title or the right to possession and has ordered the site occupant to vacate the real property.

(d) *Displacement made necessary by demolition of unfit structures.* The displacement of a site occupant from an interim assistance area is deemed made necessary by demolition of unfit structures if the vacation of the real property occurs under the following circumstances: (1) The structures occupying the real property are structurally unsound or unfit for human habitation and constitute a public nuisance and serious hazard to the public health and safety, and the Agency has so determined; and (2) the vacation of the real property occurs after the Agency has ordered the real property to be vacated and demolished.

(e) *Small business displacement payment.* A small business concern which satisfies the eligibility condition of paragraph (a) of this section is eligible for a small business displacement payment if the concern:

(1) Is not part of an enterprise having two or more establishments outside the interim assistance area;

(2) Satisfies the requirement of § 500.103(d)(3) governing evidence of earnings; and

(3) Was doing business in the interim assistance area on the date of approval by the city, other municipality, or county of an application for a Federal financial assistance contract for the area.

(f) *Temporary on-site moves.* No relocation payment shall be made to a site occupant for a temporary move within the interim assistance area.

§ 500.103c Eligibility—relocation adjustment payment; additional relocation payment; replacement housing payment.

(a) *Relocation adjustment payment.* A family or elderly individual who satisfies the eligibility conditions of § 500.103(a) (displacement from an urban renewal area) or § 500.103a(a) (displacement from a code enforcement or demolition grant area) prior to August 1, 1968, is eligible for a relocation adjustment payment if the site occupant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(a));

(2) Has moved to a decent, safe, and sanitary dwelling; and

(3) In the case of an urban renewal area is displaced on or after January 27, 1964.

(b) *Additional relocation payment.* A family or elderly or handicapped individual who satisfies the eligibility requirements of § 500.103(a) (displacement from an urban renewal area), § 500.103a(a) (displacement from a code enforcement or demolition grant area), or § 500.103b(a) (displacement from an interim assistance area), on or after August 1, 1968, is eligible for an additional relocation payment if the site occupant:

(1) Is unable to secure a suitable dwelling in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(a));

(2) Has moved to a decent, safe, and sanitary dwelling:

Provided, That an additional relocation payment not to exceed $500 in the first 12 months and $500 in the second 12 months may be made on a lump-sum basis or other than a monthly basis in cases in which other than monthly payments are determined warranted by HUD.

(c) *Replacement housing payment.* A family or individual who satisfies the eligibility conditions of § 500.103(a) (displacement from an urban renewal area), § 500.103a(a)(1) (displacement from a code enforcement or demolition grant area), or § 500.103b(a)(1) (displacement from an interim assistance area), on or after August 1, 1968, is eligible for a replacement housing payment if the site occupant:

(1) Is the owner of the real property acquired for a project assisted under title I;

(2) Has occupied a single- or two-family dwelling located on the real property for not less than 1 year prior to the initiation of negotiations for the acquisition of the property;

(3) Does not receive the additional relocation payment provided for by § 500.103c(b);

(4) Purchases and occupies a replacement dwelling within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project; and

(5) Does not receive a payment pursuant to the State law of eminent domain determined by HUD to have substantially the same purpose and effect as would a replacement housing payment, and to be a part of the cost of the project for which Federal financial assistance is available.

§ 500.103d Notice of intention to move.

Except as provided in this section, no relocation payment for moving expenses or actual direct loss of property and no small business displacement payment shall be made to a business concern unless (a) the Agency has received, at least 30 days but not earlier than 90 days prior to the moving date, written notice from the business concern of its intention to move or dispose of the property, which shall be described generally in the notice, and the date of such intended move or disposition, and (b) the business concern has permitted, at all reasonable times, the inspection by or on behalf of the Agency of such property at the site from which the business concern is displaced. For the purpose of this section, "moving date" shall mean the date on which the first item of such property is intended to be moved or disposed of. The Agency may make a relocation payment notwithstanding nonreceipt of such timely notice only if the Agency has determined that there was reasonable cause for the failure of the business concern to give such notice, and the Agency has adequately verified the facts pertaining to the move or disposition and the requested relocation payment.

§ 500.104 Administration of relocation payments.

(a) *Conditions for relocation payment.* The Agency (or, if the Agency is the municipality, the board or commission responsible for carrying out the federally assisted activities or, if there is no such board or commission, the principal executive officer of the municipality) shall approve a schedule (Form HUD-6148) of average annual gross rentals for standard housing in the locality for determining the amount of relocation adjustment payments and additional relocation payments in accordance with §§ 500.109(b)(2) and (3), and a separate schedule (Form HUD-6155) for determining the average price of standard sales housing in a locality, and any other conditions under which the Agency will make relocation payments. The schedules and conditions shall be consistent with the regulations in this subpart and shall be available in written form to site occupants in the office of the Agency.

(b) *Notice to site occupants.* The Department shall furnish all site occupants, who occupy property within an urban renewal area (or the area of the Federally assisted activities) and who are anticipated to be displaced, with a notice or informational statement advising the site occupant of (1) the availability of relocation payments to eligible site occupants, and (2) the office where the conditions under which relocation payments will be made are available for inspection.

(c) *Action on claim—finality.* The Agency is initially responsible for determining the eligibility of a claim for, and the amount of, a relocation payment and shall maintain in its files complete and proper documentation supporting the determination. The determination on each claim shall be made or approved either by the governing body of the Agency or by the principal executive officer of the Agency or his duly authorized designee. The determination by the Agency or any redetermination by HUD shall be final and conclusive with respect to the rights of any site occupant, and not subject to redetermination by any court or any other officer. Subject to the requirements of this paragraph (c), the Agency may permit a third-party contractor responsible for relocation activities to examine and recommend action on a claim and to disburse funds in payment of a claim which has been approved by the Agency.

(d) *Prompt payment.* A relocation payment shall be made by the Agency as promptly as possible after a site occupant's eligibility has been determined

in accordance with the regulations in this subpart.

(e) *Certain determinations.* (1) No claim based upon acquisition of real property by a public body other than the Agency shall be approved unless the Agency shall have determined that the claimant was displaced by the acquisition or in contemplation thereof. The determination shall be supported by a signed statement from the public body indicating (i) when it acquired or proposes to acquire the property occupied by the claimant, and (ii) whether it compensated or has agreed to compensate the claimant for moving expenses, actual direct loss of property, or settlement costs resulting from the displacement.

(2) No claim based upon code enforcement or voluntary rehabilitation shall be approved unless the Agency shall have determined that the claimant was displaced by such activities. The determination shall be supported by a statement by the Agency giving the factual basis on which the determination was made.

(3) No claim based upon interim assistance involving improvement to private properties shall be approved unless the Agency shall have determined that the claimant was displaced by such activities. The determination shall be supported by a statement by the Agency giving the factual basis on which the determination was made.

(f) *Agency setoff against claim.* The Agency may setoff against the claim of an otherwise eligible site occupant any financial claim the Agency may have against the site occupant arising out of the use of the real property.

(g) *Approval by HUD—business concerns.* No relocation payment for moving expenses or settlement costs, or both, in excess of $10,000 shall be made without approval by HUD.

(h) *Reimbursement of relocation payments.* Relocation payments made in accordance with the regulations in this subpart and pursuant to a Federal financial assistance contract are reimbursable in full to the Agency as a Title I grant.

(i) *Accounts and records.* Accounts and records shall be maintained as prescribed by HUD and shall be subject to inspection or audit at all reasonable times by HUD. Records pertaining to eligibility of relocation payments, including all claims, receipted bills or other documentation in support of a claim, and records pertaining to action on a claim, shall be retained by the Agency for not less than 3 years after the completion of the urban renewal project or the other Federally assisted activities.

§ 500.105 Fixed relocation payments to individuals and families.

(a) *Schedule of fixed payments.* An Agency intending to pay fixed amounts in lieu of payments for reasonable and necessary moving expenses and actual direct loss of property of eligible individuals and families shall prepare a schedule of the fixed amounts which it proposes to pay. The schedule shall contain a statement indicating that the Agency intends to permit eligible individuals and families to claim reimbursement for their actual moving expenses and actual direct loss of property.

(b) *Schedule provisions.* (1) A proposed schedule of fixed payments to eligible individuals and families owning furniture shall provide for a graduated scale of payments related to the number of all rooms occupied by the claimant except bathrooms, hallways, and closets, which payments shall not exceed the lowest normal charge for carting expenses for the average time required to move personal effects: *Provided,* That in any event the payments shall not exceed the maximum reimbursment to eligible individuals or families provided in the regulations in this subpart.

(2) Fixed payments to eligible individuals or families not owning furniture shall not exceed: (i) $5 for any individual, (ii) $10 for any family.

(c) *Administration of fixed payments.* Eligible individuals or families may be paid the amount provided in the schedule of fixed payments approved by HUD upon receipt of a properly completed claim. A fixed payment shall be in full settlement for the claimant's moving expense and any actual direct loss of property. If the joint occupants of a single dwelling unit at the project site move to two or more locations and consequently submit more than one claim, an eligible claimant for a fixed payment may be paid only his reasonable prorated share (as determined by the Agency) of the total fixed payment applicable to such dwelling unit, and the total of fixed payments made to all such claimants moving from such dwelling unit shall not exceed the total fixed payment applicable to such dwelling unit.

§ 500.106 Determining moving expenses of business concern.

(a) *Submission of bids prior to moving date.* No claim for a relocation payment for moving expenses in excess of $500 shall be allowed for costs incurred by a business concern on or after April 1, 1965, unless the concern has submitted to the Agency, at least 15 days prior to the commencement of the move, a bid from three reputable firms covering the moving costs involved. Whenever it is not feasible to obtain three bids for any category of work, a lesser number of bids shall be submitted, together with a written justification by the concern; and no relocation payment shall be allowed in such cases unless the Agency has approved the justification. The Agency, with HUD concurrence, may waive any requirement of this paragraph (a) for good cause.

(b) *Payment not to exceed low bid.* Payment to a business concern for moving expenses shall not exceed the amount of the low bid submitted in accordance with paragraph (a) of this section unless the bid requirement has been waived in accordance with paragraph (a) of this section.

§ 500.107 Determining actual direct loss of property.

(a) The amount of actual direct loss of any item of property claimed shall be determined as follows:

(1) The fair market value of the property for continued use at its location prior to the displacement shall be ascertained by the claimant by an appraisal satisfactory to the Agency, except as provided in subparagraph (2) of this paragraph.

(2) If the value of the property for which actual direct loss is claimed does not warrant the expenses of an appraisal then its fair market value for such continued use shall be computed as follows: The original cost of the item to the claimant (exclusive of installation cost), multiplied by the figure obtained by dividing the period of the remaining useful life of the property at the date of removal, by the period of the normal useful life of the property at the date of its acquisition by the claimant.

(3) The property shall be disposed of by a bona fide sale (as determined by the Agency) at the highest price offered after reasonable efforts have been made over a reasonable period of time to interest prospective purchasers. A trade-in of the property may be considered a bona fide sale, and the trade-in allowance, exclusive of any amount of discount that would be allowed on the price of the property being acquired in the absence of the trade-in, shall be deemed the amount realized upon the sale of the property.

(4) If the amount realized from the sale, after deducting ordinary and reasonable expenses of the sale, is less than the fair market value for such continued use, the difference between the net amount realized and the fair market value is the amount of actual direct loss of the property. Expenses of sale include such items as sale commissions, auctioneer's fees, advertising costs, and similar charges.

(b) If a bona fide sale is not effected because no offer is received for the property, after reasonable efforts have been made over a reasonable period of time to sell it, then its fair market value for continued use, ascertained as provided in this section, is the amount of actual direct loss of the property.

(c) Cost of appraisals: The cost of appraisals to determine actual direct loss of property, if made by or in behalf of the claimant, is not allowable as part of a claim.

§ 500.108 Filing of claims.

(a) *Form of claim.* To obtain a relocation payment, a site occupant shall file a written claim with the Agency on the appropriate HUD forms.

(b) *Documentation in support of claim.* A claim shall be supported by the following:

(1) If for moving expenses, except in the case of a fixed payment, a receipted bill or other evidence of such expenses. By prearrangement between the Agency, the site occupant, and the mover, confirmed in writing by the Agency, the claimant may present an unpaid moving bill to the Agency, and the Agency may pay the mover directly.

(2) If for actual direct loss of property, written evidence thereof, which may include appraisals, certified prices, copies of bills of sale, receipts, canceled checks, copies of advertisements, offers

to sell, auction records, and such other records as may be appropriate to support the claim.

(3) In any other case, such documentation as may be required by the Agency, which may include income tax returns, withholding or informational statements, and proof of age.

(c) *Time for filing claims.* A claim for moving expenses, actual direct loss of property, or a small business displacement payment shall be submitted to the Agency within a period of 6 months after the displacement of the claimant. A claim for settlement costs shall be submitted within 6 months after the costs have been incurred. A claim for a relocation adjustment payment or for an additional relocation payment shall be submitted within a period of 60 days after the displacement of the claimant. A claim for a replacement housing payment shall be submitted within 18 months after the displacement of the claimant.

(1) *Displacement prior to January 13, 1965.* Notwithstanding the first two sentences of the introductory text of this paragraph (c), a claim for relocation adjustment payment or for a small business displacement payment by a claimant displaced from an urban renewal area on or after January 27, 1964, and prior to January 13, 1965, shall be submitted within a period of 60 days of the last published or other notice by the LPA of the availability of such payments.

(2) *Waivers.* The time limitations in this paragraph (c) may be waived by the Agency for good cause, with HUD concurrence, in the case of a claimant displaced on or after January 27, 1964.

§ 500.109 Limitations on amount of relocation payments.

(a) *Moving expenses and loss of property—(1) Maximum amount—individuals or families.* The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to an individual or family shall not exceed $100 with respect to moving expenses incurred and actual direct loss of property suffered prior to September 23, 1959, and $200 with respect to such expenses incurred and loss suffered on or after September 23, 1959. The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to two or more unrelated individuals occupying the same dwelling unit shall not exceed $200.

(2) *Maximum amount—business concerns.* The maximum relocation payment that may be made or recognized in the case of a business concern for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, shall not exceed $2,000 with respect to moving expenses incurred or direct loss of property suffered prior to July 12, 1957, or $2,500 with respect to moving expenses incurred or direct loss of property suffered between July 12, 1957, and September 22, 1959, both dates inclusive, or $3,000 with respect to moving expenses incurred or direct loss of property suffered on or after September 23, 1959. If the total of the actual moving expenses incurred on or after June 30, 1961, and prior to October 2, 1962, is greater than $3,000, the maximum relocation payment that may be made or recognized in the case of a business concern, for which reimbursement or compensation is not otherwise made, shall be the total of such actual moving expenses. If the total of the actual moving expenses incurred on or after October 2, 1962, and prior to August 12, 1965, is greater than $3,000, the maximum relocation payment that may be made or recognized in the case of a business concern, for which reimbursement or compensation is not otherwise made, shall be the sum of:

(i) The total actual moving expenses or $25,000, whichever is less; and

(ii) In the case of projects on a two-thirds capital grant basis, two-thirds of the actual moving expenses in excess of $25,000: *Provided*, That the Department makes a cash payment to the business concern out of local funds in an amount equal to one-third of the actual moving expenses in excess of $25,000, which payment shall not constitute a local grant-in-aid to the urban renewal project or any portion of the local share of the cost of the Federally assisted activities required by Title I; or

(iii) In the case of projects on a three-fourths capital grant basis, three-fourths of the actual moving expenses in excess of $25,000: *Provided*, That the Agency makes a cash payment to the business concern out of local funds in an amount equal to one-fourth of the actual moving expenses in excess of $25,000, which payment shall not constitute a local grant-in-aid to the urban renewal project or any portion of the local share of the cost of the Federally assisted activities required by Title I.

(3) *Maximum moving distance.* If a business concern moves beyond 100 miles from the boundary of the city, town, or village, as the case may be, in which the Federally assisted activities are carried out, a relocation payment for its moving expenses may not be made in excess of the reasonable and necessary expenses for moving such distance of 100 miles.

(b) *Small business displacement payment; relocation adjustment payment; additional relocation payment and replacement housing payment.* A small business displacement payment shall be $1,500 for business concerns displaced prior to August 10, 1965, and $2,500 for business concerns displaced on or after August 10, 1965.

(2) *Maximum amount—relocation adjustment.* The total relocation adjustment payment that may be made for a family or elderly individual shall be an amount not to exceed $500 which, when added to 20 percent of the annual income of the family or individual at the time of displacement, equals the average annual gross rental required for a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the Federally assisted activities are carried out or in other areas not generally less desirable in regard to public utilities and public and commercial facilities), as determined by the Agency.

(3) *Maximum amount—additional relocation payment.* The total additional relocation payment that may be made to a family or elderly or handicapped individual shall consist of monthly payments over a period not to exceed 24 months and shall be paid in an amount (not to exceed $500 in the first 12 months and not to exceed $500 in the second 12 months) which, when added to 20 percent of the annual income of the family or individual at the time of displacement, shall be equal to the average annual gross rental required at such time to secure a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the federally assisted activities are carried out or in other areas not generally less desirable in regard to public utilities and commercial facilities), as determined by the Agency.

(4) *Maximum amount—replacement housing payment.* The total replacement housing payment that may be made for a family or individual eligible for a replacement housing payment under § 500.103c(c) of the regulations in this subpart shall be an amount not to exceed $5,000, which, when added to the acquisition payment, shall be equal to the average price required for purchase of a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, which is reasonably accessible to public services and places of employment, and which is available on the private market.

§ 500.110 Determinations in condemnation proceedings.

Notwithstanding any other provision of the regulations in this subpart, when property is acquired by proceedings in condemnation, and the amount of the judgment includes an allowance for any of the expenses included within the definition of relocation payment in § 500.101 (p) of this subpart, the portion of the judgment representing compensation for these expenses, if separately stated, shall be entitled to recognition as a relocation payment in an amount not to exceed the applicable dollar limitations of § 500.109: *Provided*, That the allowance for actual direct loss of property makes no compensation for loss of goodwill or profit.

SUBCHAPTER B—OPEN-SPACE LAND

PART 540—OPEN-SPACE LAND

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Subpart A—Relocation Payments

§ 540.100 Statement of applicable law.

Section 404(a) of the Housing and Urban Development Act of 1965, 42 U.S.C. 3074(a), provides that financial assistance extended to any applicant under the Open-Space Land Program under title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500, may include grants for relocation payments made on such terms and conditions and subject to such limitations as are set forth in sections 114 (b), (c), and (d) of the Housing Act of 1949, as amended, 42 U.S.C. 1465 (b), (c), and (d). Section 516 of the Housing and Urban Development Act of 1968, 42 U.S.C. 1465(c), amends section 114(c) by expanding the relocation payments provisions applicable to the programs of the Department of Housing and Urban Development.

§ 540.101 Definitions.

For the purpose of the regulations in this subpart, the following terms shall mean:

(a) *Actual direct loss of property.* Actual loss in the value of the property (exclusive of goods or other inventory kept for sale) sustained by the claimant by reason of the disposition or abandonment of the property resulting from the claimant's displacement. A loss resulting from damage to the property while being moved is not included.

(b) *Acquisition.* The obtaining by the Agency of title to, or the right to possession of, real property.

(c) *Agency.* A public body authorized to acquire real property in the locality for open-space use.

(d) *Base period.* The 2 tax years immediately preceding displacement (or, if the business concern is not in business that long, such other period as may be approved by HUD): *Provided,* That if a business concern does not qualify as a small business concern under paragraph (r)(2) of this section based upon the 2 tax years immediately preceding displacement and the Agency finds that its business activity during such period was not representative, the base period shall be the third and fourth tax years immediately preceding displacement.

(e) *Business concern.* A corporation, partnership, individual, or other private entity, including a nonprofit organization, engaged in some type of business (including farming), professional, or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property (including livestock) for the carrying on of the business, profession, or institution.

(f) *Claimant.* An individual, family, or business concern, as defined in this section; or, in the case of a claim for a relocation payment for settlement costs, an owner (or joint owners), other than a public entity, of real property, or interest therein, transferred to the Agency.

(g) *Family.* Two or more persons related by blood, marriage, or adoption, who are living together in a single dwelling unit.

(h) *Federal Grant Contract.* A contract between the Federal Government and the Agency under title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500, for a grant by the Federal Government for the acquisition of real property for open-space use.

(i) *HUD.* (1) Prior to November 9, 1965, the Housing and Home Finance Administrator; or (2) on and after November 9, 1965, the Housing and Home Finance Administrator in the Department of Housing and Urban Development pending appointment of the Secretary of Housing and Urban Development, and thereafter the Secretary of Housing and Urban Development; or (3) an employee duly authorized to perform the functions of such Administrator or Secretary.

(j) *Individual.* A person who is not a member of a family. An elderly individual is an individual 62 years of age or over at the time of displacement. A handicapped individual is an individual who has a physical impairment which is expected to be of long-continued and indefinite duration and which substantially impedes his ability to live independently.

(k) *Moving expenses*—(1) *Individuals and families.* Costs of packing, storing (for a period of 1 year or less), carting, and insuring of property and incidental costs of disconnecting and reconnecting household appliances.

(2) *Business concerns.* Costs of dismantling, crating, storing (for a period of 1 year or less), transporting, insuring, reassembling, reconnecting, and reinstalling of property (including livestock and goods or other inventory kept for sale), exclusive of the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting such reassembly, reconnection, or reinstallation.

(l) *Project.* Undertakings and activities of any Agency in connection with the acquisition of real property for open-space use.

(m) *Project area.* The area acquired by the Agency, the acquisition of which is assisted under a Federal Grant Contract.

(n) *Property.* Tangible personal property, excluding fixtures, equipment, and other property which under State

or local law are considered real property, but including such items of real property as the site occupant may lawfully remove.

(o) *Real property: Acquisition of; transfer of title to.* References to the acquisition of real property or to the transfer of title to real property or similar references are references to a fee simple title or lesser interest.

(p) *Relocation payment.* A payment by an Agency:

(1) To an individual or family, for reasonable and necessary moving expenses and any actual direct loss of property (for which reimbursement or compensation is not otherwise made);

(2) To a business concern, for its reasonable and necessary moving expenses and any actual direct loss of property except goodwill or profit (for which reimbursement or compensation is not otherwise made);

(3) To a small business concern, for its displacement (small business displacement payment);

(4) To or on behalf of a family or elderly individual for relocation adjustment prior to August 1, 1968 (relocation adjustment payment); or to or on behalf of a family or elderly or handicapped individual on or after August 1, 1968 (additional relocation payment).

(5) To an individual, family, or business concern for settlement costs (for which reimbursement or compensation is not otherwise made).

(6) To a family or individual to assist an owner-occupant of a one- or two-family dwelling in the purchase and occupancy of a replacement dwelling on or after August 1, 1968 (replacement housing payment).

(q) *Settlement costs.* (1) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the Agency;

(2) Penalty costs for prepayment of any mortgage encumbering such real property; and

(3) The pro rata portion of real property taxes and public service charges allocable to a period subsequent to the date of vesting of title, or the effective date of the acquisition of such real property by the Agency, whichever is earlier.

(r) *Small business concern.* A business concern (other than a nonprofit organization) which during the base period had:

(1) Average annual net earnings before income taxes of less than $10,000; and

(2) In the case of displacements prior to June 15, 1966, average annual gross receipts or sales in excess of $1,500; or, in the case of displacements on and after June 15, 1966, average annual gross receipts or sales in excess of $1,500 together with average annual net earnings before income taxes in excess of $500, or average annual gross receipts or sales in excess of $2,500.

Earnings for the purpose of this paragraph (r) include salaries, wages, or other compensation received by an owner of the concern or any member of his household related to him. The term "owner" as used in the previous sentence includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by HUD.

(s) *Title VII.* Title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500.

§ 540.102 Relocation payments by the Agency.

The Agency shall make relocation payments to or on behalf of eligible claimants in accordance with and to the full extent permitted by the regulations in this subpart: *Provided,* That for each Federal Grant Contract the Agency may elect whether to make payments for moving expenses in excess of $25,000 in accordance with § 540.113(a)(2). Relocation payments made in accordance with the regulations in this subpart and pursuant to a Federal Grant Contract are reimbursable in full to the Agency as a Title VII grant.

§ 540.103 Eligibility conditions—moving expenses, actual direct loss of property, and settlement costs.

(a) *Moving expenses and actual direct property loss.* A claimant is deemed displaced by the acquisition of real property for open-space use and is eligible for a relocation payment for moving expenses and actual direct loss of property if:

(1) The acquisition of real property necessitates vacation of such property by the claimant on or after March 4, 1965; and

(2) (i) The claimant is an occupant of the real property on the date of execution of a Federal Grant Contract authorizing the acquisition of the real property or, if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal Grant Contract, the date of such HUD concurrence (provided that in the latter case a Federal Grant Contract for the project is thereafter executed), regardless of when or if such acquisition takes place, or (ii) the claimant is an occupant of the real property at the time of its acquisition.

(b) *Moving expenses—outdoor advertising display.* Notwithstanding the fact that a business concern may not be doing business in the project area, and subject to all other eligibility requirements of paragraph (a) of this section, a business concern shall be entitled to a relocation payment for moving expenses with respect to its outdoor advertising displays required in the determination of the Agency to be removed from the project area.

(c) *Settlement costs.* A claimant is deemed displaced by the acquisition of real property for open-space use and is eligible for a relocation payment for settlement costs if (1) he is the owner of the real property on or after August 10, 1965, and at the time of the transfer of title to the Agency, and (2) if the transfer of title to the real property occurs on or after the date of execution of a Federal Grant Contract authorizing the acquisition of the real property, or if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal Grant Contract, on or after the date of such HUD concurrence: *Provided,* That a Federal Grant Contract for the project is thereafter executed.

(d) *Temporary moves within project area.* No relocation payment shall be made for a temporary move within the project area.

§ 540.104 Eligibility conditions—small business displacement payment.

A small business concern which satisfies the eligibility conditions of § 540.103 (a) governing moving expenses and actual direct loss of property is eligible for a small business displacement payment if the concern:

(a) Is not a part of an enterprise having two or more establishments outside the project area;

(b) Has filed with the Internal Revenue Service income tax returns for the base period; or has furnished such other evidence of earnings as may be approved by HUD; and

(c) Was doing business in the real property on the date of the approval by the Agency of an application for an open-space grant under Title VII.

§ 540.105 Eligibility—relocation adjustment payment; additional relocation payment; replacement housing payment.

(a) *Relocation adjustment payment.* A family or elderly individual who satisfies the eligibility conditions of § 540.103 (a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, prior to August 1, 1968, is eligible for a relocation adjustment payment if the claimant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling.

(b) *Additional relocation payment.* A family or elderly or handicapped individual who satisfies the eligibility conditions of § 540.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for an additional relocation payment if the claimant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing

and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling: *Provided,* That an additional relocation payment not to exceed $500 in the first 12 months and $500 in the second 12 months may be made on a lump-sum basis or other than a monthly basis in cases in which other than monthly payments are determined warranted by HUD.

(c) *Replacement housing payment.* A family or individual who satisfies the eligibility conditions of § 540.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for a replacement housing payment if the claimant:

(1) Is the owner of the real property acquired for a project assisted under title VII of the Housing Act of 1961, as amended, 42 U.S.C. 1500;

(2) Has occupied a single- or two-family dwelling located on the real property for not less than 1 year prior to the initiation of negotiations for the acquisition of the property;

(3) Does not receive the additional relocation payment provided for by § 540.105(b);

(4) Purchases and occupies a replacement dwelling within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project; and

(5) Does not receive a payment pursuant to the State law of eminent domain determined by HUD to have substantially the same purpose and effect as would a replacement housing payment and to be a part of the cost of the project for which Federal financial assistance is available.

§ 540.106 Vacation of real property within 18 months after acquisition by Agency.

Notwithstanding any other provision of the regulations in this subpart, no claimant displaced from predominantly undeveloped land shall be eligible for any relocation payment (other than settlement costs) unless the claimant vacates the real property within 18 months (or such other period as the Agency shall, with HUD concurrence, approve) after acquisition of the real property by the Agency.

§ 540.107 Notice of intention to move.

Except as provided in this section, no relocation payment for moving expenses or actual direct loss of property and no small business displacement payment shall be made to a business concern unless (a) the Agency has received, at least 30 days but not earlier than 90 days prior to the moving date, written notice from the business concern of its intention to move or dispose of the property, which shall be described generally in the notice, and the date of such intended move or disposition, and (b) the business concern has permitted, at all reasonable times, the inspection by or on behalf of the Agency of such property at the site from which the business concern is displaced. For the purpose of this section, "moving date" shall mean the date on which the first item of property is intended to be moved or disposed of. The Agency may make a relocation payment notwithstanding nonreceipt of such timely notice only if the Agency has determined that there was reasonable cause for the failure of the business concern to give such notice, and the Agency has adequately verified the facts pertaining to the move or disposition and the requested relocation payment.

§ 540.108 Administration of relocation payments.

(a) *Conditions for relocation payment.* The Agency (or, if the Agency is the municipality, the board or commission responsible for carrying out the federally assisted activities or, if there is no such board or commission, the principal executive officer of the municipality) shall approve a schedule (Form HUD-6148) of average annual gross rentals for standard housing in the locality for determining the amount of relocation adjustment payments and additional relocation payments in accordance with §540.113 (c) and (d), and a separate schedule (Form HUD-6155) for determining the average price of standard sales housing in a locality, and any other conditions under which the Agency will make relocation payments. The schedules and conditions shall be consistent with the regulations in this subpart and shall be available in written form to claimants in the relocation office of the Agency.

(b) *Notice to claimants.* The Agency shall furnish all claimants who are anticipated to be displaced, with an informational statement advising the claimant of (1) the availability of relocation payments and (2) the office where the conditions under which relocation payments will be made are available for inspection.

(c) *Action on claim—finality.* The Agency is initially responsible for determining the eligibility of a claim for, and the amount of, a relocation payment and shall maintain in its files complete and proper documentation supporting the determination. The determination on each claim shall be made or approved either by the governing body of the Agency or by the principal executive officer of the Agency or his duly authorized designee. The determination by the Agency or any redetermination by HUD shall be final and conclusive with respect to the rights of any claimant, and not subject to redetermination by any court or any other officer. Subject to the requirements of this paragraph (c), the Agency may permit a third-party contractor responsible for relocation activities to examine and recommend action on a claim and to disburse funds in payment of a claim which has been approved by the Agency.

(d) *Prompt payment.* A relocation payment shall be made by the Agency as promptly as possible after a claimant's eligibility has been determined in accordance with the regulations in this subpart.

(e) *Agency setoff against claim.* The Agency may set off against the claim of an otherwise eligible claimant any financial claim the Agency may have against the claimant arising out of the use of the real property.

(f) *Approval by HUD—business concerns.* No relocation payment for moving expenses or settlement costs, or both, in excess of $10,000 shall be made without approval by HUD.

(g) *Accounts and records.* Accounts and records shall be maintained as prescribed by HUD and shall be subject to inspection or audit at all reasonable times by HUD. Records pertaining to eligibility of relocation payments, including all claims, receipted bills or other documentation in support of a claim, and records pertaining to action on a claim, shall be retained by the Agency for not less than 3 years after the completion of the project.

§ 540.109 Fixed relocation payments to individuals and families for moving expenses.

(a) *Schedule of fixed payments.* An Agency intending to pay fixed amounts in lieu of payments for reasonable and necessary moving expenses and actual direct loss of property of eligible individuals and families shall prepare a schedule of the fixed amounts which it proposes to pay. The schedule shall contain a statement indicating that the Agency intends to permit eligible individuals and families to claim reimbursement for their actual moving expenses and actual direct loss of property.

(b) *Schedule provision.* (1) A proposed schedule of fixed payments to eligible individuals and families owning furniture shall provide for a graduated scale of payments related to the number of all rooms occupied by the claimant except bathrooms, hallways, and closets, which payments shall not exceed the lowest normal charge for carting expenses for the average time required to move personal effects: *Provided,* That in any event the payments shall not exceed the maximum reimbursement to eligible individuals or families provided in the regulations in this subpart.

(2) Fixed payments to eligible individuals or families not owning furniture shall not exceed: (i) $5 for any individual, (ii) $10 for any family.

(c) *Administration of fixed payments.* Eligible individuals or families may be paid the amount provided in the schedule of fixed payments approved by HUD upon receipt of a properly completed claim. A fixed payment shall be in full settlement for the claimant's moving expense and any actual direct loss of property. If the joint occupants of a single dwelling unit at the project site move to two or more locations and consequently submit more than one claim, an eligible claimant for a fixed payment may be paid only his reasonable prorated share (as determined by the Agency) of the total fixed payment applicable to such

dwelling unit, and the total of fixed payments made to all such claimants moving from such dwelling unit shall not exceed the total fixed payment applicable to such dwelling unit.

§ 540.110 Determining moving expenses of business concern.

(a) *Submission of bids prior to moving date.* No claim for a relocation payment for moving expenses in excess of $500 shall be allowed for costs incurred by a business concern on or after December 1, 1966, unless the concern has submitted to the Agency, at least 15 days prior to the commencement of the move, a bid from three reputable firms covering the moving costs involved. Whenever it is not feasible to obtain three bids for any category of work, a lesser number of bids shall be submitted, together with a written justification by the concern; and no relocation payment shall be allowed in such cases unless the Agency has approved the justification. The Agency, with HUD concurrence, may waive any requirement of this paragraph (a) for good cause.

(b) *Payment not to exceed low bid.* Payment to a business concern for moving expenses shall not exceed the amount of the low bid submitted in accordance with paragraph (a) of this section unless the bid requirement has been waived in accordance with paragraph (a) of this section.

§ 540.111 Determining actual direct loss of property.

(a) The amount of actual direct loss of any item of property claimed shall be determined as follows:

(1) The fair market value of the property for continued use at its location prior to the displacement shall be ascertained by the claimant by an appraisal satisfactory to the Agency, except as provided in subparagraph (2) of this paragraph.

(2) If the value of the property for which actual direct loss is claimed does not warrant the expenses of an appraisal, then its fair market value for such continued use shall be computed as follows: The original cost of the item to the claimant (exclusive of installation cost), multiplied by the figure obtained by dividing the period of the remaining useful life of the property at the date of removal, by the period of the normal useful life of the property at the date of its acquisition by the claimant.

(3) The property shall be disposed of by a bona fide sale (as determined by the Agency) at the highest price offered after reasonable efforts have been made over a reasonable period of time to interest prospective purchasers. A trade-in of the property may be considered a bona fide sale, and the trade-in allowance, exclusive of any amount of discount that would be allowed on the price of the property being acquired in the absence of the trade-in, shall be deemed the amount realized upon the sale of the property.

(4) If the amount realized from the sale, after deducting ordinary and reasonable expenses of the sale, is less than the fair market value for such continued use, the difference between the net amount realized and the fair market value is the amount of actual direct loss of the property. Expenses of sale include such items as sale commissions, auctioneer's fees, advertising costs, and similar charges.

(b) If a bona fide sale is not effected because no offer is received for the property, after reasonable efforts have been made over a reasonable period of time to sell it, then its fair market value for continued use, ascertained as provided in this section, is the amount of actual direct loss of the property.

(c) Cost of appraisals: The cost of appraisals to determine actual direct loss of property, if made by or in behalf of the claimant, is not allowable as part of a claim.

§ 540.112 Filing of claims.

(a) *Form of claim.* To obtain a relocation payment, a claimant shall file a written claim with the Agency on the appropriate HUD forms.

(b) *Documentation in support of claim.* A claim shall be supported by the following:

(1) If for moving expenses, except in the case of a fixed payment, a receipted bill or other evidence of such expenses. By prearrangement between the Agency, the claimant, and the mover, confirmed in writing by the Agency, the claimant may present an unpaid moving bill to the Agency, and the Agency may pay the mover directly.

(2) If for actual direct loss of property, written evidence thereof, which may include appraisals, certified prices, copies of bills of sale, receipts, canceled checks, copies of advertisements, offers to sell, auction records, and such other records as may be appropriate to support the claim.

(3) In any other case, such documentation as may be required by the Agency, which may include income tax returns, withholding or informational statements, and proof of age.

(c) *Time for filing claims.* A claim for moving expenses, actual direct loss of property, or a small business displacement payment shall be submitted to the Agency within a period of 6 months after the displacement of the claimant. A claim for settlement costs shall be submitted within 6 months after the costs have been incurred. A claim for a relocation adjustment payment or for an additional relocation payment shall be submitted within a period of 60 days after the displacement of the claimant. A claim for a replacement housing payment shall be submitted within 18 months after the displacement of the claimant.

(1) *Displacement prior to December 1, 1966.* Notwithstanding the first three sentences of this paragraph (c), the 6-month and 60-day filing periods referred to therein shall commence running on the date of receipt of a notification of the availability of relocation payments or the date of a published notice with respect to any claimant who is displaced prior to December 1, 1966, and prior to the receipt of such notification or the date of such published notice.

(2) *Waivers.* The time limitations in this paragraph (c) may be waived by the Agency for good cause, with HUD concurrence.

§ 540.113 Limitation on amount of relocation payments.

(a) *Moving expenses and loss of property.*—(1) *Maximum amount—individuals or families.* The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to an individual or family shall not exceed $200. The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to two or more unrelated individuals occupying the same dwelling unit shall not exceed $200.

(2) *Maximum amount—business concerns.* The maximum relocation payment that may be made or recognized in the case of a business concern for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, shall not exceed $3,000: *Provided,* That if the total of the actual moving expenses incurred on or after March 4, 1965, and prior to August 12, 1965, is greater than $3,000, the maximum relocation payment that may be made or recognized in the case of a business concern, for which reimbursement or compensation is not otherwise made, shall be the total of such actual moving expenses or $25,000, whichever is less. If the total of the actual moving expenses incurred on or after August 12, 1965, is greater than $3,000, the maximum relocation payment that may be made or recognized in the case of a business concern, for which reimbursement or compensation is not otherwise made, shall be the sum of:

(i) The total actual moving expenses or $25,000 whichever is less; and

(ii) A percentage of the actual moving expenses in excess of $25,000, which percentage shall be the same as the percentage of project cost paid for by the Federal Grant under the terms of the Federal Grant Contract: *Provided,* That the Agency makes a cash payment to the business concern equal to the remainder of the actual moving costs in excess of $25,000, which payment shall not constitute any portion of the local share of the project cost.

(3) *Maximum moving distance.* If a business concern moves beyond 100 miles from the boundary of the city, town, township, village, or county, as the case may be, in which the project is carried out, a relocation payment for its moving expenses may not be made in excess of the reasonable and necessary expenses for moving such distance of 100 miles.

(b) *Small business displacement payment—fixed amount.* A small business displacement payment shall be $1,500 for

business concerns displaced prior to August 10, 1965, and $2,500 for business concerns displaced on or after August 10, 1965.

(c) *Maximum amount—relocation adjustment payment.* The total relocation adjustment payment that may be made for a family or elderly individual shall be an amount not to exceed $500 which, when added to 20 percent of the annual income of the family or individual at the time of displacement, equals the average annual gross rental required for a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the project is carried out or in other areas generally not less desirable in regard to public utilities and public and commercial facilities), as determined by the Agency.

(d) *Maximum amount—additional relocation payment.* The total additional relocation payment that may be made to a family or elderly or handicapped individual shall consist of monthly payments over a period not to exceed 24 months and shall be paid in an amount (not to exceed $500 in the first 12 months and not to exceed $500 in the second 12 months) which, when added to 20 percent of the annual income of the family or individual at the time of displacement, shall be equal to the average annual gross rental required at such time to secure a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the project is carried out or in other areas not generally less desirable in regard to public utilities and commercial facilities), as determined by the Agency.

(e) *Maximum amount—replacement housing payment.* The total replacement housing payment that may be made for a family or individual eligible for a replacement housing payment under § 540.105(c) of the regulations in this subpart shall be an amount not to exceed $5,000, which, when added to the acquisition payment, shall be equal to the average price required for purchase of a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, which is reasonably accessible to public services and places of employment, and which is available on the private market.

§ 540.114 Determinations in condemnation proceedings.

Notwithstanding any other provision of the regulations in this subpart, when property is acquired by proceedings in condemnation, and the amount of the judgment includes an allowance for any of the expenses included within the definition of relocation payment appearing in § 540.101(p) of this subpart, the portion of the judgment representing compensation for these expenses, if separately stated, shall be entitled to recognition as a relocation payment in an amount not to exceed the applicable dollar limitation of § 540.113: *Provided,* That the allowance for actual direct loss of property makes no compensation for loss of goodwill or profit.

Subpart B—The Legacy of Parks Program

§ 540.201 Objectives.

Objectives of the program as set forth in the law include:

To help curb urban sprawl and prevent the spread of urban blight and deterioration, to encourage more economic and desirable urban development, to assist in preserving areas and properties of historic or architectural value, and to help provide necessary recreational, conservation, and scenic areas by assisting State and local public bodies in taking prompt action to (1) provide, preserve, and develop open-space land in a manner consistent with the planned long-range development of the Nation's urban areas, (2) acquire, improve, and restore areas, sites, and structures of historic or architectural value, (3) develop and improve open space and other public urban land, and (4) encourage the acquisition of interests in undeveloped or predominantly undeveloped land which would have special significance in helping to shape economic and desirable patterns of urban growth.

§ 540.202 Scope.

The program provides matching grants to States and local public bodies for up to 50 percent of the cost for acquiring title or other interests in and developing open-space land; for acquiring, restoring, or improving sites, structures or areas of historic or architectural significance; and for public environmental improvements which provide long-term benefits in urban areas. In addition, the program provides grants to States and local public bodies for up to 75 percent of the cost for acquiring interest in undeveloped or predominantly undeveloped land which has special significance in helping to shape economic and desirable patterns of urban growth (hereinafter sometimes referred to as "urban shaping" projects).

§ 540.203 The program and low and moderate income housing.

(a) The Department of Housing and Urban Development (HUD) will encourage use of the program to provide recreation resources and other amenities in and near housing developments for low and moderate income families.

(b) Program projects and sites that include in their service area public or private housing developments for low and moderate income families will be given priority consideration for funds if they will provide open space opportunities within a year to such housing developments and if such housing developments involve 50 or more housing units already existing or planned.

§ 540.204 Coordination with other HUD programs.

HUD supports an integrated approach at local, State, and Federal levels to urban development. To facilitate this approach, extra credit under the project selection system will be given to projects that are undertaken in conjunction with other HUD programs, such as the New Communities Program and Operation Breakthrough.

§ 540.205 Citizen participation.

HUD encourages meaningful participation of citizens in HUD-assisted activities at the local government level.

§ 540.206 Public control and use.

Land acquired under this program must remain under public control in perpetuity (except "urban shaping" projects or conversions meeting standards specified in § 540.250). Areas acquired or assisted under the program must be available to the general public, without discrimination.

§ 540.207 Applicants.

Any State or local public body including any Indian tribe, band, group, and nation of the United States which is legally authorized to undertake a project under the program and to contract with the Federal Government to receive funds for that purpose is eligible for grants.

§ 540.208 Project location criteria.

(a) Authorized projects must be located in an area which is urban in character. This includes those surrounding areas which in the judgment of the Secretary, form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of growth, location of transportation facilities and systems and distribution of industrial, commercial, residential, governmental, institutional and other activities.

(b) Where there may be a question of meeting the urban area requirement, determinations as to eligibility will be made by HUD.

§ 540.209 Local share.

The Federal share of a project cannot exceed 50 percent of eligible costs (except for urban shaping projects, § 540.202). To secure Federal funding the applicant must show that local funds are available or authorized for the project. Evidence of availability of funds must show that necessary local legislative approvals and authorizations have been given, including authorization for specific project financing when State or local public funds are used. Where any portion of the local share is coming from a source not directly controlled by the applicant, the applicant must show evidence of a binding commitment for the funds, or its intention to provide the entire non-Federal share. Part of the local share may be provided by donated materials or land as provided in § 540.248.

§ 540.210 Planning requirements.

Section 703 of title VII of the Housing Act of 1961, requires that grant assistance provided pursuant to this title must be needed for carrying out a unified or officially coordinated program, meeting criteria established by the Secretary, for the provision and development of open-space land as part of the comprehensively planned development of the urban area.

(a) *Planning requirement determinations.* Planning comments must show that the proposed project is part of or consistent with the areawide comprehensive plan and program for the urban area, and must show that the project is part of or consistent with a functional element of that plan.

(b) *Certification.* HUD has initiated a certification procedure for notifying areawide planning organizations and areawide planning jurisdictions when they fulfill HUD planning requirements. The certification process is effective for Areawide Planning Jurisdiction and Organization Certification, Comprehensive Planning Certification, and will also be effective for Functional Planning and Programing Certification on July 1, 1972. This is explained in detail in Circulars MPD 6415.1A, and MPD 6415.3, copies of which are available from the HUD area office.

(c) *Requirements for projects primarily of local significance.* If the project is primarily of local significance (such as small parks), the project must be in, or consistent with, the local comprehensive plan and evidence must be shown that the project is consistent with the areawide comprehensive planning process.

§ 540.211 Coordination requirements.

(a) *Project notification and review system.* Potential applicants shall comply with the Project Notification and Review System described in Office of Management and Budget Circular No. A–95.

(b) *Review and comment.* (1) Applications and any amendments thereto which involve a major change in a project, must be submitted for review to the HUD recognized Areawide Planning Organization (APO), where the applicant is located. If the applicant is a special purpose unit of local government, such as a recreation commission, the applications must be submitted for review by the units of general local government in the area where the project is to be located, as well as to the APO.

(2) Each application, when submitted to HUD, must be accompanied by the comments and recommendations of the APO and, if through a special purpose unit of local government, the general local government, and a statement by the applicant that such comments and recommendations have been considered prior to formal submission of the application.

(c) If the APO has been designated as a metropolitan or regional clearinghouse under Office of Management and Budget Circular A–95, the applicant must satisfy the requirements of that circular.

(d) Projects in or affecting a model neighborhood require execution of the certification in the application form which gives evidence of participation in planning the project by the City Demonstration Agency and its citizen participation structure, as well as any input by the citizen participation structure that local arrangements provide.

(e) Executive Order 11237, July 27, 1965 (30 F.R. 9433), sets forth policies and requirements for coordination of programs of open space acquisition for recreational purposes and is applicable to this program and the outdoor recreation program administered by the Bureau of Outdoor Recreation (BOR), Department of the Interior, under the Land and Water Conservation Fund Act of 1965, 16 U.S.C. 460d, 460*l*. Pursuant to the order, the following requirements apply:

(1) If land proposed to be acquired for recreational purposes under either program is located wholly or partly in an urban area, the acquisition must meet the planning and programing requirements of this program, whether assistance is to be obtained under the Land and Water Conservation Fund Act, 16 U.S.C. 460d, 460*l*, or this program.

(2) No application shall be filed with HUD under the program for acquisition or development of land included in an application currently under consideration for possible funding by the Bureau of Outdoor Recreation, U.S. Department of the Interior, through the Land and Water Conservation Fund.

(3) Projects with historic significance may be considered for fund assistance from either this program or the Department of the Interior National Park Service Program, "Grants to States for Historic Preservation." However, applicants must elect to apply for assistance under either HUD's or Interior's grant programs and may not apply under both.

§ 540.212 Historic preservation.

For the costs of acquiring, restoring, improving, or moving a structure of historic or architectural significance to be eligible for assistance, such structure, site, or area must be listed on the National Register of Historic Places.

§ 540.213 Relocation policies and requirements.

Projects under the program are subject to all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646, 84 Stat. 1894) and the Secretary's rules and regulations issued thereunder (24 CFR Part 42). Applicants will be required to submit satisfactory assurances as specified in section 210 of the Act.

§ 540.214 [Reserved]

§ 540.215 Civil rights provisions.

Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d), prohibits discrimination on the basis of race, color, or national origin in the use of any facility or improvement of property provided with Federal assistance. When filing for assistance, an applicant must certify his intention to comply with this requirement.

§ 540.216 Equal employment opportunity requirements.

Executive Order 11246, as amended, specifies that Federally assisted construction contractors must take affirmative action to ensure that there is equal employment opportunity without regard to race, color, religion, sex, or national origin. This requirement applies to all contracts under the program involving construction work such as improvements, demolition and site clearance, and restoration. Grantees should secure from a HUD office instructions on procedures and requirements.

§ 540.217 Federal labor standards and contracting requirements.

(a) Construction projects being financed with Federal funds under the program must meet Federal labor standards and prevailing wage requirements, except that work performed by employees of the grant recipient and contracts of less than $2,000 will be exempt from the Federal labor standards provisions.

(b) The applicant will be required to certify that all bidding documents, contracts, and subcontracts except as exempted above, include the Federal labor standards provisions. The applicant will be responsible for administering and enforcing these provisions.

(c) HUD Area Offices will provide necessary information on Federal labor standards which require payment of at least minimum wage rates (including fringe benefits) applicable to each classification of laborers and mechanics employed, as determined by the Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a); payment of time and one-half for overtime worked in excess of 8 hours in 1 day or 40 hours in 1 week, as required by the Contract Work Standards Act, 40 U.S.C. 327; payment in full (less deductions made mandatory by law) to all employees engaged in work on the project not less often than once each week; and compliance with applicable regulations issued by the Secretary of Labor in accordance with the provisions of the Copeland 18 U.S.C. 974, and Antikickback Acts 40 U.S.C. 276c.

§ 540.218 Political activity of public body personnel.

Section 12(a) of the Hatch Act, 5 U.S.C. 1501 et seq., applies with respect to officers and employees of the grant recipient whose principal employment is in connection with an activity which is financed in whole or in part by Federal grants made under title VII of the Housing Act of 1961, as amended.

§ 540.219 Continuing maintenance program for assisted projects.

Properties acquired or developed under the program must be satisfactorily maintained. The applicant must certify to an adequate maintenance and operating program for the property for a minimum of 3 years except for historic preservation projects where perpetual maintenance is required.

§ 540.220 Environmental impact statement.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321) establishes new national policy, goals and procedures for protecting and enhancing the

environment. For projects specified below, an environmental impact statement will be required with the application:

(a) All sanitary landfill projects.

(b) Any project upon which two or more surface areas of water will be impounded.

(c) Block land acquisitions of 8 acres or more in high density and built-up areas, or of 300 acres elsewhere.

(d) Projects affecting properties on the National Register of Historic Places (see § 540.225).

The form for this statement is available from the HUD Area Office.

§ 540.221 Land adjacent to school sites.

(a) Where land is being acquired adjacent to a site for a new school, grant assistance will generally be limited to the acquisition of land in excess of the minimum local site standards for new school sites. The minimum local standards will be those explicitly adopted by the school agency; in an instance where no minimum standards have been adopted, a set of recommended standards used by the school agency may be accepted.

(b) In every case where land is being acquired or developed adjacent to a school site, the application must include the following:

(1) A statement that the open space being acquired is for general community or neighborhood benefit and use, and will be open to the general public except when its use would conflict with the functions of the adjacent school.

(2) A written cooperation agreement between the school agency and the park/recreation agency indicating that it is their intent to maximize the multiple-use capability of all school open space areas and that the design and operational planning of the respective agencies incorporates this concept.

§ 540.222 Land located in flood plain.

HUD encourages location of projects in flood plains. However, if a proposed project is located within the limits of a flood plain area, the applicant is required to submit certain statements concerning potential hazards, justification and designs for the area (see § 540.247).

§ 540.223 Sanitary landfill treatment.

Property proposed for sanitary landfill treatment can be acquired under the program only when the project meets the following requirements:

(a) The applicant must provide certifications by appropriate local and State agencies that the landfill operation will not contribute to water or air pollution, or cause a public nuisance; and

(b) The proposal must provide for readying the land for open space use within 10 years; and

(c) An "Environmental Impact Statement" must be submitted (see § 540.220).

§ 540.224 Disaster Relief Act of 1970 (Public Law 91-606).

Projects in Presidentially proclaimed major disaster areas will be given priority and immediate consideration for grant assistance.

§ 540.225 Properties on the National Register.

(a) Section 106 of the Historic Preservation Act of 1966 (Public Law 89-655, 80 Stat. 915) requires that all Federal agencies prior to licensing or approving any undertaking, shall take into account the effect of a project on any district, site, building, structure, or object listed on the National Register of Historic Places, maintained by the National Park Service of the U.S. Department of the Interior.

(b) If any proposed project under the program will adversely affect a National Register property, the applicant should bring it to the attention of the HUD Area Office.

§ 540.226 Acquisition and clearance.

(a) *For open space or historic preservation purposes.* Land to be acquired must be located in an urban area and must be within the area for which the applicant exercises, or participates in the exercise of, open space responsibilities. Acquired land may be undeveloped, predominantly undeveloped or developed. Acquisition of developed land is permitted only if the local governing body determines that adequate open space cannot effectively be provided through the use of existing undeveloped or predominantly undeveloped land. No size limit is imposed on acquired undeveloped or predominantly undeveloped sites. However, the size of developed land sites will generally be limited to no more than 4 acres.

(b) *For urban shaping projects.* Land must be undeveloped or predominantly undeveloped. If withheld from commercial, industrial, and residential development, land must have special significance in helping to shape economic and desirable patterns of urban growth outside of existing urban areas which is directly related to the development of new communities or the expansion and revitalization of existing communities.

(c) *Impact on project cost.* For the purpose of computing the amount of the Federal grant generally no more than the fair market value of the acquired land will be considered. The fair market value (FMV) will be established in accordance with procedures stipulated in §§ 540.232-540.234. The HUD share of acquisition cost will not exceed 50 percent (or 75 percent in the case of "urban shaping" projects) of the certified FMV regardless of the cost incurred by the applicant, unless the property is acquired by condemnation and the award is determined by a trial on the merits of the issue of value according to law. Any amount paid pursuant to a stipulation of agreement with an owner in excess of the certified FMV acquisition price will not be recognized as a project cost.

§ 540.227 Timing of acquisition.

Project cost will not include the FMV of land acquired prior to HUD authorization to proceed with purchase. Land will be considered acquired as of the date a mutually binding purchase agreement is executed, title to the land is transferred, or condemnation proceeding is initiated which proceeding cannot be withdrawn without penalty, whichever is earliest.

§ 540.228 Completion of acquisition.

Acquisition under an approved project must be completed or condemnation proceedings must be instituted within 12 months of the time the grant contract is executed between HUD and the applicant unless an extension of the time period has been specifically requested and approved in writing by HUD.

§ 540.229 Eligible acquisition costs.

(a) Costs related to acquisition which are eligible for grant assistance include: The cost of required appraisals, title reports, assurances of title, negotiation expenses, cadastral survey of the project boundary, condemnation court costs, attorney's fees for condemnations and closing purchases, closing costs, interest paid on condemnation awards, taxes and public service charges allocable to the period after acquisition, as well as permissible or required costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (24 CFR Part 42).

(b) However, attorney's fees of the applicant for necessary legal services will not be considered an eligible project cost if the attorney performing the service is a regular employee of the applicant, or if he or his firm is employed under a lump sum retainer arrangement to perform all services for the applicant.

§ 540.230 Land acquisition policies and requirements.

Projects under the program are subject to all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the Secretary's rules and regulations issued thereunder (24 CFR Part 42). Applicants will be required to submit satisfactory assurances under section 305 of the Act. Details for land acquisition procedures and requirements are available from the HUD Area Office.

§ 540.231 Terms and conditions of acquisition.

Each property shall be acquired on the following basis:

(a) *Title.* Except as indicated in § 540.237, fee simple title shall be acquired subject only to reservations, outstanding interest, encumbrances, and exceptions to title approved by HUD.

(b) *Closing and possession.* To the extent practical, the owner shall be permitted in the agreement of sale to determine the date for closing and delivery of possession.

(c) *Taxes and public charges.* Real property taxes and any charges for public services (such as water, sewerage, and trash collection) shall be prorated as of the date title vests in the applicant or the date of taking possession or under a court order in an eminent domain proceeding or under a voluntary given right

of entry and possession, whichever occurs first.

(d) *Rents and deposits.* Rents and deposits collected by a seller from tenants shall be either prorated as of the date of closing or retained by the seller for the rental period in which title is acquired by the applicant. Any deposits or rent prepaid to the seller beyond the end of the current rental period or beyond 1 month after closing, whichever occurs first, shall be paid by the seller to the applicant at closing.

(e) *Closing costs.* The expense of closing, including examination and evidence or assurance of title and preparation and recording instruments of conveyance to the applicant, shall be paid by the applicant as an eligible project cost. But the applicant shall not pay any cost of clearing title.

§ 540.232 Determining fair market value.

In making its determinations of fair market value, the applicant shall take the following actions:

(a) *Appraisals.* Each property shall be appraised independently by two competent professional appraisers selected by the applicant. An additional appraisal is permitted if required by State law, if discrepancies appear in the two appraisals first obtained, or there is presence of trade fixtures in a property.

(b) *Staff review of appraisals.* The appraisals must be reviewed by a competent staff appraiser or a private professional appraiser under contract to the applicant. The review shall require the appraisers to make any corrections in their reports needed to ensure substantial consistency in factual data therein. The reviewer shall determine the acceptability and adequacy of the appraisal reports, including the data and analyses furnished by the appraisers to support their opinions of value. The review shall include an on-site inspection of the property and of the comparable properties considered by the appraisers in deriving their valuations. If the reviewer finds the appraisal reports acceptable and properly documented, he shall determine for each parcel his opinion of the fair market value thereof. The reviewer findings shall be set forth in a written report which shall identify the appraisal reports reviewed and explain the basis for his conclusion as to fair market value.

(c) *Applicant's determination of value.* The applicant shall study its review appraiser's fair market value determinations and his report thereon. With respect to properties for which the governing body of the applicant accepts the reviewer's report and valuations, it shall adopt a resolution which among other things:

(1) Establishes the fair market value of each property;

(2) Identifies each property by name of owner, parcel number of other identification;

(3) Delimits the property and the interest to be acquired therein;

(4) Certifies as to the work of the appraisers and the review appraiser with respect to each property.

With respect to any properties for which the applicant does not agree with its review appraiser's determinations of fair market value, the applicant shall submit to HUD, for determination of the acquisition price which may be included in project cost, all appraisal reports on the properties, the reports of the review appraiser, a statement of the determination of fair market value proposed by the applicant and its justification therefor.

(d) *Procedure after determining fair market value.* (1) A certified copy of the resolution of the applicant, which establishes the applicant's determinations of fair market value, shall be sent to HUD promptly after its adoption.

(2) After submitting the resolution to HUD, the applicant shall promptly open negotiations for the acquisition of the properties involved in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894) and the HUD Secretary's rules and regulations issued thereunder (24 CFR Part 42).

§ 540.233 Property of local government or certain officials.

If a parcel is owned, or was owned at any time after the filing of the application, by another public body, a member of the applicant's governing body, or an officer or employee of the applicant who exercises any responsible function in carrying out the project, the maximum amount that will be recognized for the acquisition of the parcel, whether acquired by purchase or condemnation, will not exceed the lowest of the following:

(a) The fair market value, as concurred in by HUD.

(b) The price paid by such owner, if the owner acquired the property after the filing of the application, except by, or as a consequence of, foreclosure of a tax lien.

(c) The price received by such owner, if sold after the filing of the application.

§ 540.234 Value of public property.

The determination of fair market value for a property owned by a public entity shall not reflect:

(a) Enhancement or depreciation attributable to the undertaking of the project.

(b) Enhancement in value from any cause after the first acquisition of privately owned property for the project.

The determination of fair market value shall not exceed the highest satisfactory appraisal, properly adjusted to take the foregoing factors into account and shall be the value of the property for private uses for which the property is suitable or adaptable.

§ 540.235 Acquisition of structures.

(a) Structures located on land being acquired, may be acquired and their acquisition cost included as an eligible project cost, if in the judgment of the HUD area office such acquisition does not change the open space character of the project. Unless infeasible or impractical structures which are not to be demolished should be considered for possible recreation or open space related functions. Eligible costs for refurbishing such structures are discussed in § 540.242.

(b) Where demolition is contemplated and permissible, for each structure the cost of acquisition, demolition, and site clearance, less salvage value, may be included in the project cost. To the extent possible, structures to be demolished and cleared should be small, detrimental, or dilapidated and substandard.

§ 540.236 Mortgage or deed of trust.

Land encumbered by mortgages or deeds of trust may be acquired provided:

(a) That such an agreement does not extend for a period of time longer than ten (10) years;

(b) That no grant payment will be made until the amount owing on the mortgage or deed of trust note has been reduced to 50 percent of the certified fair market value (FMV) of the acquired property.

§ 540.237 Acquisition of less than fee interest.

Applicant proposals to undertake projects involving acquisition of less than a fee interest in land will be considered by HUD on a case basis. Such exemptions to fee simple title could include the purchase of easements, purchase agreements subject to life-estates, lease-back arrangements or reserved rights, and short- or long-term leases. Specific information on allowable exceptions can be obtained from the HUD Area Office.

§ 540.238 Deed restriction: recordation.

(a) Deeds and other instruments required to vest title of record in the applicant shall be recorded. For each assisted open space site, applicants shall record in the deed or land records of the jurisdiction a restriction which states that the sale, lease, mortgaging, or creation of other indebtedness or other transfer of the site or any interest therein is subject to the prior approval of the Secretary of Housing and Urban Development and for properties listed on the National Register of Historic Places prior approval of the Secretary of HUD and the Secretary of the Interior must be provided for.

(b) Cost of recordation is an eligible project cost.

§ 540.239 Eligible development costs.

Development and clearance activities are eligible under the Program. Such activities must be compatible with the nature of the community's control of the land. If a community controls lands by means of a short-term lease, then assistance will not be provided for expensive and immovable types of development. Projects undertaken as "urban shapers" (75 percent grants for land acquisition cost) may include development (50 percent grant) where the development is compatible with both the immediate and long-term use of the land and where the project is in a defined urban area.

§ 540.240 Timing of development activities.

(a) Development activities begun prior to the issuance of a letter of consent will not be eligible for assistance. Development is considered commenced as of the date the applicant becomes unconditionally bound by a contract or issues a work order covering the activities in question, or actually begins the activities, whichever is earlier.

(b) In combined acquisition and development projects, development must be commenced either within 6 months of the date the land is acquired or the contract for the project is executed, whichever is later. All activities must be completed within 12 months of contract execution.

(c) Where a project involves development only, activities must commence within 6 months of contract execution and be completed within 12 months of the contract execution date.

(d) HUD will give priority status to applications involving areas where there is a critical need for recreational facilities, and which contemplates immediate development of such facilities.

§ 540.241 Development and restoration planning.

Site design plans, detailed construction drawings, and specifications, and restoration plans, drawings, and specifications are required for all development and restoration projects carried out under the program. Preparation of such plans, drawings, and specifications may be undertaken prior to the submission of an application; however, the cost of such preparation will be eligible as part of project costs only if undertaken after issuance of an authorization to proceed (see § 540.247). Notwithstanding the foregoing restrictions, the reasonable costs of preliminary and general planning necessary to estimate project costs for application or preapplication preparation will be eligible for inclusion in project costs even if incurred prior to issuance of an authorization to proceed.

§ 540.242 Park development.

Plans for developing park and open-space land must insure that the land's character as open space is preserved.

(a) *Structures.* (1) As a general rule, no more than 10 percent of the area of a site may be occupied by structures or buildings not being preserved under historic preservation. However, when the area to be acquired is 2 acres or less, the 10 percent limitation may be waived. Recreation improvements such as game courts or minor structural apparatus such as playground equipment are not included in the 10 percent computation. The applicant must obtain prior HUD approval of any construction which would result in covering more than 10 percent of an open-space site with major structures or buildings, whether or not HUD assistance is required for the proposed development activities.

(2) Applicants planning to use a portion of an assisted site for the location of any building or other structure not clearly related to public recreation and other leisure time activities, must obtain advance permission in writing from HUD.

(b) *Swimming pools.* (1) Pools serving either low-income or high density populations or both will be eligible for grant assistance. To meet the low-income requirement the median family income of the service area of a swimming pool would be $5,000 or less. HUD will consider waivers for special situations. To meet the high density requirements the pool must be located in an area that is zoned for high density uses, such as high-rise apartments, multiple family dwellings and row houses.

(2) Year-round pool facilities are eligible for assistance under the program. Such assistance may include up to $100,000 per project in grant funds for the costs of any structure providing weather protection.

(c) *Other development.* Basic activities for making a park site useable or increasing its usefulness may be funded under the program. Such activities include:

(1) *Transportation and circulation.* Roadways, vehicular bridges, and parking areas as well as sidewalks, foot bridges, and paths for walking, hiking, and bicycle riding.

(2) *Landscaping and basic site improvement.* Grading, planting, and seeding. Construction of retaining walls, bulkheads, curbing, fencing, directional signs, site markets, and fixtures necessary for safety measures.

(3) *Utilities.* Installation of basic utilities needed to serve the area, including sanitary sewers, storm sewers, and drainage systems, water lines and water facilities, electric facilities, lighting fixtures, and undergrounding of utility lines.

(4) *Recreational facilities and equipment.* Facilities having long-term usefulness, including playground apparatus, paved game courts, game fields, wading pools, fountains and reflecting pools, equipment for use by particular age groups, such as the elderly, and picnic areas including fireplaces, tables, and shelters.

(5) *Improvement of acquired structures.* Minor refurbishing of structures acquired shall be allowed if the building will be used for recreation purposes. Eligible costs for the restoration of historic structures listed on the National Register are discussed in § 540.245.

§ 540.243 Environmental improvements.

Activities designed to make public lands more pleasing to the eye, more attractive and compatible with their surrounding area, and more useful to residents may be assisted. Generally, assistance will not be provided for the construction of buildings; however, small structures, such as bus shelters and kiosks may be eligible for assistance if they contribute to the greater use and enjoyment of public lands. Eligible activities under this category are as follows:

(a) *Malls, squares, and plazas.* Construction or installation of fountains, decorative pavement and lighting, planters, street furniture, kiosks, lavatories, sculpture, and similar improvements. Activities in behalf of the arts such as construction of facilities for outdoor exhibits may also be included; however, the applicant should consult with HUD in cases where the cost of such facilities will be more than nominal.

(b) *Improvement of linking areas of the community.* Community-wide improvement of streets, greenways, parkways, stream valleys, rights-of-ways, and other nonrecreational public places. Eligible activities include tree planting, landscaping design, construction, signs, undergrounding of utilities, and other measures to beautify the area over and above normal maintenance.

(c) *Public buildings and sites.* Installation of landscaping, special fencing, lighting and paving, wall murals, mosaics and effect lighting. In all cases, the site for which assistance is granted must be available to the general public.

§ 540.244 Underground placement of utility distribution systems.

As used in this subpart, the term, "utility distribution systems," means existing low-voltage overhead electric and telephone utility distribution lines or systems. Underground placement of high voltage distribution systems is not eligible for funding under the program. Underground placement of portions of existing utility distribution systems located on a program assisted site will in no event be funded unless the locality has adopted and is enforcing legal measures to assure that utility distribution systems installed in the future will be placed underground. If the utility company may legally be required to place existing lines underground at its own expense, no part of the cost is eligible for grant assistance. However, if the utility company may not be so required, the net cost of placing a portion of an existing system underground, which portion is located on a program assisted site is eligible for funding. "Net cost" means the cost remaining after the salvage value of transformers and other salvable equipment has been deducted. If capacity is increased at the same time that utilities are placed underground, the cost attributable to increase of capacity is not eligible for assistance.

§ 540.245 Eligible historic preservation activities.

In addition to the activities previously listed under park development and environmental improvements, there are a number of special activities relating to historic preservation which are eligible for funding under the program.

(a) *Acquisition, restoration, and other eligible activities.* (1) Acquisition of properties (see § 540.229).

(2) Restoration of historic sites, areas, and structures to which the applicant has title or other permanent interest appropriate to the proposed project.

(3) Construction and stabilization costs to make historic buildings structurally safe.

(4) Architectural fees and related professional services essential to restoration, including necessary historical research and measured drawings.

(5) If historic structure to be restored is to be used for private purposes, only costs of external restoration and costs of making the structure safe, are eligible.

(6) If historic structure will be open to the public on a regular basis, complete restoration of the interior building components will be eligible. This includes detailed restoration of nonstructural fixtures, and of interior works of art which are an integral part of the structure.

(7) If the structure will be open to the public but complete interior restoration is not planned, program funds may be used for interior construction work to make the building useable. This will include basic interior finish and detailing.

(8) Exploratory engineering or architectural investigation for the purpose of determining structural integrity, making restoration or rehabilitation cost estimates, or determining whether structure is safe to the public.

(b) *Moving historic structures.* Moving an historic structure will be funded if evidence is presented that the structure faces imminent danger of loss unless moved. The following are eligible moving costs:

(1) Stabilization of structure necessary for transportation.

(2) Transportation of structure.

(3) Rough grading and preparation of new site and provision of suitable foundation.

(4) Public utility disconnections and reconnections as necessary.

(5) Acquisition cost of new site only when there is no suitable publicly owned site.

§ 540.246 Project selection system.

(a) *General.* (1) Project selection is a systematic method of selecting for approval those applications which best meet the national goals of the legislation.

(2) The method of selection relies on information provided in the application; therefore, applicants are urged to refer to the ranking criteria which follow to ensure that pertinent information about each project which might influence its ranking is submitted with the application.

(b) *Ranking of applications and funding decisions*—(1) *Priority projects.* Those priority projects receiving letters of fund assurance shall be classified as to output classification and be processed for technical compliance and announcement. The following types of high priority activities may receive preapplication fund assurance by submitting a letter of intent:

(i) Requests to develop open space in service areas where existing public open space is under 2.5 acres per thousand population. Project development must take place within 1 year.

(ii) Requests to provide open space opportunities within a year to low- or moderate-income housing developments. These housing developments must involve 50 or more housing units and must be already existing or planned for construction.

(iii) Requests from a State or county to construct recreational facilities within a year on a site accessible to the central city in the already-developed or developing part of a Standard Metropolitan Statistical Area (SMSA). Access might be by public transportation or by some special transit program.

(iv) Requests to develop within 1 year, open space facilities serving low-income citizens in built-up portions of urban areas. Citizen participation in selecting and planning the site should be evidenced and if a model city neighborhood, a favorable statement from the CDA Director should be attached. These priority projects receiving letters of fund assurance shall be classified as to output classification and be processed for technical compliance and announcement.

(2) *Nonpriority projects.* (i) Nonpriority projects shall be classified as to output group and considered for possible funding based on their ability to meet the ranking criteria and within funding constraints of each output group. Once applications in a decision set have been classified into program output groups, they are ranked within each output group by a series of paired comparisons. Under this technique, any two applications are compared with each other on the basis of the criteria for the group. One application is ranked above the other and then a third application is ranked separately with the first two, being compared against them one at a time. This process is repeated for the whole group so that each application has been ranked against all others.

(ii) Once all of the output groups have been ranked, the budget for the decision set is distributed among the output groups by the area office. The top 10 percent of applications not funded will be held for a second analysis in the next decision set; the balance will be returned to the applicant. No application will be ranked in more than two decision sets.

(c) *Project analysis.* The project selection system involves three basic steps: (1) Classification of each site into a "program output group," (2) ranking of sites within each group according to specific criteria established for each group, and (3) decision on funding each program output group within the budget. Sites are classified into one output group that best characterizes the site and its use.

(d) *Program output groups*—(1) *General.* Projects classified in Groups A, B, and D must be within Standard Metropolitan Statistical Areas (SMSA's). Groups C and F include both SMSA and non-SMSA areas; Group E includes non-SMSA areas only.

(2) *Group A—Encouragement of better urban form; tracts that will demonstrably help guide urban development or redevelopment (urban shaping projects)*—(i) *General considerations.* (a) The key word is "demonstrably." Essentially all public acquisitions of land have some effect on urban development, either present or future. This group is limited to open space proposals involving acquisitions clearly intended as shaping mechanisms. Examples are such elements of guiding growth as preventing the development of flood plains for incompatible uses, separation of land uses, buffers, and reservation of stream valleys.

(b) Classification of proposals into this group must recognize the element of shape and scale for effectiveness. Minor acquisitions whose shaping influence would be limited to the land immediately adjoining would not qualify for this group.

(c) Large acquisition whose effect could not be registered within the next 5–7 years should not be included in this group, even though the site could eventually have long-range shaping influence a decade or more hence.

(ii) *Ranking criteria.* (a) Evidence of techniques other than land acquisition being effectively used to guide urban growth and development, such as ordinances and activities supporting less-than-fee preservation of open space, tax incentives, and regulations for planned unit developments.

(b) Degree to which the form and timing of the project can be expected effectively to guide growth or development by preventing sprawl, separating land uses or densities, preventing uneconomical development, etc.

(c) Degree to which the project is geared to the planning process and is specifically related to projected growth.

(d) Imminence of loss to incompatible development.

(e) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(3) *Group B–1—Areas providing needed open space opportunity in low-income neighborhoods*—(i) *General considerations.* (a) Neighborhood or community here means the service area of the specific project—within a 10-minute walk for a tot lot in a densely build-up area, within the city limits for a city-wide park, and so forth. Sites may range in size from a few thousand square feet to 10 to 20 acres or more.

(b) Median family income in the service area or neighborhood of the project below $5,000 shall be taken as sufficient evidence to warrant classification in this group. This standard is not inflexible, however. Other cases where the facility is specifically designed to serve the needs of low-income families, and where access to the site is available or will be provided by the community may also fit this group.

(ii) *Ranking criteria.* All projects in this group are eligible for fund assurance and will not be subject to the project selection system.

(4) *Group B–2—Neighborhood parks*—(i) *General considerations.* (a) This group includes most small parks and recreation areas and includes projects whose primary function is the provision of active outdoor recreation to large numbers of people. It includes organized

game areas, tot lots, most small to moderate size city and neighborhood parks (except where any of the aforementioned facilities are in a low-income area, in which case they would be classed as B–1).

(b) Areas over 20 acres would not normally meet this group definition. The existence of smaller areas within a large facility which are intended for intensive development (such as a children's playground in a large regional park) would not qualify the larger area for classification in this group.

(ii) *Ranking criteria.* (a) Degree to which the proposed project will meet the needs of a broad spectrum of the service area population, including its accessibility by walking or public transportation.

(b) Evidence of unmet recreation needs.

(c) Evidence of rapid community growth.

(d) Proximity of the project to the city center.

(e) Evidence of intent to develop the area for immediate use.

(f) Imminence of loss or incompatible development.

(g) Number of people who may benefit from the project relative to the investment.

(h) Evidence site is the last remaining suitable undeveloped land in a neighborhood.

(i) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(5) *Group B–3—General recreation areas*—(i) *General considerations.* This group includes most large city parks, regional parks, and areawide facilities. It includes many areas devoted to hunting, fishing, picnicking, camping, hiking, nature study, ski areas, and most land to be developed for golf courses.

(ii) *Ranking criteria.* (a) Evidence of unmet recreation needs.

(b) Evidence of rapid community growth.

(c) Proximity of the project to the city center, and accessibility by walking or public transportation.

(d) Evidence of intent to develop area for immediate use.

(e) Imminence of loss or incompatible development.

(f) Evidence of priority assigned the project in areawide and local planning and programing.

(g) Number of people who may benefit from the project relative to the investment.

(h) Evidence site is the last remaining suitable undeveloped land in the service area.

(i) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(6) *Group C—Historic sites and structures including non-SMSA*—(i) *General considerations.* (a) This group includes all projects intended primarily to preserve historic sites, structures, buildings, or objects. It also includes the area immediately surrounding the historic site that will be treated as part of the same complex. Large areas having historical buildings will not automatically be classified in this group, unless the primary function of the entire area is to preserve or protect the historic sites.

(b) This group is normally limited to relatively small sites (20 acres or less) at the location of the historic site.

(c) In selecting projects for grant assistance, HUD will give special consideration to those projects which are related to the Department's broad goals and which help support other HUD-assisted activities.

(ii) *Ranking criteria.* The following factors will be considered in evaluating projects for grant assistance:

(a) Potential contribution to the community or area in light of planned use of the property.

(b) Historic or architectural significance of the site, structure, or area.

(c) Evidence of need for Federal assistance.

(d) Imminence of loss, including anticipated construction, use change, deterioration, etc.

(e) Priority of project in any existing State or areawide historic preservation plan.

(f) Potential contribution to the community or area in light of the project's relationship to other HUD goals, including citizen participation and the relationship to programs and projects designed to help meet the Nation's housing goals.

(7) *Group D—Scenic and conservation areas*—(i) *General considerations.* (a) This group is largely devoted to resource-oriented open space projects. Examples of typical areas include a municipal watershed, a nature area, a scenic vista, preservation of wetlands, examples of the natural environment, small forest preserves, ecologic laboratories, general watershed protection areas, wildlife sanctuaries and habitat, and similar areas.

(b) Areas classified in this group may involve some use of the area for outdoor recreation, including hunting, fishing, camping, picnicking, hiking, skiing, nature walks, and so forth.

(ii) *Ranking criteria.* (a) Evidence that the project will meet an urgent local need.

(b) Evidence of priority afforded the project by areawide and local planning and programing.

(c) Evidence of multiple open space uses being served, and if recreation is involved, accessibility of the area by public transportation and intensity of use.

(d) Evidence the project is a key part of an open space plan.

(e) Evidence that less-than-fee acquisition will not suffice.

(f) Evidence site is the last remaining suitable for this purpose in a community or neighborhood.

(g) Ecological significance.

(h) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(8) *Group E—Small towns (except historic projects*—(i) *General considerations.* This group includes all open space projects (except historic projects) from applicants outside Standard Metropolitan Statistical Areas. The purpose of this group is to recognize the differences of scale, purpose, size of clientele, and dollar magnitudes more often involved in proposals submitted by smaller communities outside SMSA's. Within the group, a subclassification should be assigned to place the project in Groups A, B, or D. This subgrouping is used for identification purposes.

(ii) *Ranking criteria.* (a) Evidence that the project will meet an urgent local need.

(b) Evidence of priority afforded the project by local programing.

(c) Evidence the proposal will have substantial favorable economic impact—e.g. increased tourism.

(d) Evidence of intent to develop area for immediate use.

(e) Evidence of local financial contribution.

(f) Relative number of people who may benefit from the project for the investment required.

(g) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(9) *Group F—Environmental improvements*—(i) *General considerations.* This group includes community-wide efforts to improve the overall appearance of a community or neighborhood. Particular emphasis is placed on those areas which although not yet blighted to the point of requiring major rehabilitation, are ugly and uninviting—lacking in improvements so important to a sense of community spirit.

(ii) *Ranking criteria.* (a) Evidence that predominant costs of activities included in the application will be allocated for residential or residentially related activities.

(b) Degree to which the form and timing of the project can be expected to effectively help in the overall upgrading of the neighborhood or community and extent to which this program is coordinated with other programs and regulations to improve the quality of the environment.

(c) Evidence of community need for Federal assistance, including frequency and volume of prior grants.

(d) Special urgency in the need for grant funds resulting from such factors as rapid increase in population or where the project will benefit low and moderate income persons in an area being developed for new residents, high population density, natural disasters, or an unemployment problem among the disadvantaged or minority group members.

(e) The adequacy of the local capital improvements program as it relates to the development of a continuing environmental improvement effort.

(10) *Special cases.* (i) Malls and plazas are classified as Group A.

(ii) Very large open space systems related to a metropolitan area are classified as Group A.

(iii) Beaches are classified as either Group B–1 or B–2, as appropriate.

(iv) School-park complexes are classified as either Group B–1 or B–2, as appropriate.

§ 240.247 Submission and processing requirements.

(a) *Applications.* Application forms and technical assistance in application preparation are provided by HUD area offices. Preapplication conferences will usually be required for new applicants and may be required for any other applicant at the discretion of the HUD office. Applicants are encouraged to submit a consolidated application covering all program assisted activities planned for 1 year.

(b) *Letters of intent.* Applicants may file a complete program application or a letter expressing intent to submit an application. If the applicant submits a letter of intent, it must contain enough information to qualify the site(s) proposed for assistance in one of the priority categories listed in § 540.246 and must include the following information:

(1) Name and address of the official applicant agency.

(2) General (neighborhood) location of the site(s) to be acquired and/or developed.

(3) Estimated total project acreage and cost (including acquisition and development).

(4) A commitment to acquire the land and/or complete development within 1 year.

(5) If specific sites are planned, then comments from the Areawide Planning Agency and the A–95 Clearinghouse are needed.

(c) *Letters of assurance.* (1) Upon receipt of a letter of intent, HUD may issue a "letter of assurance" immediately, but in any event HUD will respond to the applicant within 1 week either providing a letter of assurance, or explaining to the applicant why such assurance will not be issued.

(2) The letter of assurance will temporarily set aside the necessary funds, following which the community will have 120 days to complete the necessary actions that can permit formal submission of a complete application. If the applicant has not "taken up" the assurance at the end of the 120-day period, the assurance will be canceled.

(d) *Condemned land.* If a condemnation proceeding has been instituted with respect to any land covered by an application for grant, the application documentation shall identify the parcels for which condemnation proceedings have been instituted and, with respect to those parcels, include the following:

(1) An opinion by the legal counsel for the applicant, establishing the legal authority of the applicant to discontinue the condemnation proceedings at any time prior to judgment without incurring substantial liability or penalty, and

(2) A statement that the applicant complied with HUD land acquisition policy requirements prescribed in § 240.230 and describing the negotiations undertaken to purchase each parcel.

(e) *Flood plain areas.* If a proposed project is located within the limits of a flood plain area, the applicant should contact the HUD Area Office for instructions.

(f) *Processing procedures.* Upon receipt of the application, HUD will assign a project number. A notification will immediately be sent to the applicant acknowledging receipt of the application, giving the assigned project number and indicating that the application has been accepted for processing or if not, why not. If nonremediable defects are noted (such as ineligibility of proposed project), the applicant will be advised that the applicant is rejected for nonremediable reasons. If the application is incomplete, the applicant will be given 30 calendar days to submit the additional material. If requested informations is not received within 30 calendar days, the application may be canceled and returned to the applicant.

(g) *Authorization to proceed.* (1) The program cannot assist land acquisition or project development activities commenced prior to express HUD authorization to proceed.

(2) Property will be considered acquired as of the date a mutually binding purchase agreement is executed, title is transferred, or a condemnation proceedings is initiated which cannot be discontinued without incurring substantial liability or penalty, whichever is earlier.

(3) Development will be considered commenced as of the date the applicant becomes unconditionally bound by a contract or issues a work order covering the activities, or actually begins the activities, whichever is earlier.

(4) The letter acknowledging application receipt is not an authorization to proceed.

(5) HUD authorization to proceed with activities under a pending application in advance of a decision on the application does not insure that the project will later be approved for grant assistance. This authorization is extended to applicants only on an "at your own risk" basis.

§ 540.248 Financial requirements, restrictions, and information.

(a) *Inspection fee.* An inspection fee must be included in the computation of the total cost of any application. The amount of the fee is based on the cost of all eligible activities included in an application and, in any event, will be not less than $750. The applicant's share of the fee will be collected by deducting it from the initial payment of grant funds under an approved project. Specific advice regarding the inspection fee will be provided by HUD area offices.

(b) *Fee schedule for real estate services.* For projects involving the acquisition of land, the estimated expense of real estate negotiation services, as an eligible administrative cost, may be computed from the maximum allowable fee schedule set forth below:

Land Valuation	*Maximum Compensation*
Less than $2,000	$25 plus 3 percent of excess above $500.
$2,000 to $5,000	$70 plus 2 percent of excess above $2,000.
$5,000 to $10,000	$130 plus 1½ percent of excess above $5,000.
$10,000 to $20,000	$205 plus 1 percent of excess above $10,000.
$20,000 to $50,000	$305 plus ¾ percent of excess above $20,000.
$50,000 to $200,000	$505 plus 0.2 percent of excess above $50,000.
$200,000 or more	$805 plus 0.1 percent of excess above $200,000.

(c) *Local share*—(1) *General.* The local share of total project cost may be made up of cash, force account work, or private donations of land, or materials. However, "not more than 50 per centum of the non-Federal share of such eligible project cost may be made up by donations of land or materials" as provided in section 702 of the Act. The remainder of the non-Federal share may be made up of force account work.

(2) *Donations.* (i) Gifts, bequests, and endowments of money or land, except anonymous donations, to the applicant are acceptable for up to 50 percent of the applicant's share of project costs, subject to concurrence in advance by HUD.

(ii) If a project is to involve donations of land or material obtain details on eligibility from the HUD area office.

(3) *Force account.* Services provided by the applicant through utilization of its own employees in carrying out development plans and activities may be utilized as part of the non-Federal share of a project.

(d) *Federal share.* Grants under the program will be made only to reimburse the applicant for expenditures made for project activities. Therefore, the applicant must demonstrate capacity to finance project costs prior to receiving assistance.

§ 540.249 Project approval.

Information about HUD's actions and requirements following grant approval will be furnished by the HUD Area Office.

§ 540.250 Transfers, conversions, interim uses.

(a) *General.* Projects receiving assistance are to be utilized as specified in the application and HUD grant contract. Under some conditions, the intended use may be altered if the change is in the interest of the applicant grantee and the Federal Government. Any proposed interim use, incidental change in use of conversion to other uses, however, must have prior approval of HUD. Furthermore, any income realized from interim uses must be deducted from total project cost or officially earmarked for open space purposes.

(b) *Short term transfer of interests*—(1) *Transfer where there is an incidental change of use.* Transfer of an interest in assisted land is permissible where the resulting change of land use is not inconsistent with the overall approved open

space use of the project and prior approval has been obtained from HUD. For example, HUD might approve an underground-powerline easement through a park.

(2) *Transfer of short-term interest contemplated originally.* Transfer of a short term interest in assisted land may be allowed if such transfer is found to be consistent with project purposes and approved as part of the original approved project. For example, HUD might approve a year lease of land to be used for farm purposes if this land is not immediately needed by the grantee for approved purposes. Any such approval will be specifically evidenced in the grant agreement with the grantee. "Short term", as used herein, is defined as not exceeding 3 years from the date of the grant agreement.

(3) *Transfer of a short-term interest not originally approved.* Transfer of a short-term interest not approved as part of the original approved project may be permitted where the assisted land has not been utilized for its approved use. For example, HUD might approve a 1-year lease for parking purposes of land which was acquired for recreational use but has not been developed. "Short term" is defined for purposes, herein, as not exceeding 3 years from date of approval of the transfer.

(4) *Conditions for approval.* Approval of such transfers will be based upon proposed uses and terms and conditions that HUD deems appropriate, including repayment or reduction of the grant based on the value to the grantee of the transferred interest.

(5) *Documents required for approval.* To obtain approval for a transfer of interest, the applicant should consult the HUD area office.

(c) *Transfers of interest for historic structures.* HUD will permit lease arrangements between an applicant and another entity, which need not be a public body, of a historic or architecturally significant structure if necessary to preserve the structure and use it appropriately. Proposals for such lease arrangements should be included in the application.

(d) *Conversion of land involving historic or architectural properties.* (1) The conversion to other uses of any historically or architecturally significant properties assisted under the program must have prior approval by both the Secretary of HUD and the Secretary of the Interior. Application of this requirement is limited to properties listed on the National Register pursuant to the Historic Preservation Act of 1966 (Public Law 89-665, 80 Stat. 915; 16 U.S.C. 470).

(2) All such conversions are subject to the requirement of section 106 of such Act and shall be subject to review and comment by the Advisory Council on Historic Preservation. A grantee planning any such conversion should ask the HUD area office for instructions.

(3) All conversions of such properties will require repayment by the applicant of the Federal grant or use of a sum equal to total project cost plus interest for other historic preservation activities.

(e) *Long-term transfer of interest.* (1) Proposals to transfer a long-term interest in project land will be considered by HUD only in unique and exceptional cases. Long term, as used herein means, greater than 3 years. Continued public use, in no way restricted, must be assured in any proposed long-term transfer of interest. The transfer of interest must result in a greater benefit to the community or project service area than the implementing of the originally intended use.

(2) HUD approval, when warranted, of a proposed transfer of a long-term interest will be based upon terms and conditions that HUD deems appropriate, including repayment or reduction of the grant or pending grants based on the value to the grantee of the transferred interest.

(f) *Conversion of land acquired for open space use and land developed with program assistance.* HUD will permit conversions from open space uses of land assisted under the program (other than historic or architecturally significant properties) when certain standards can be met, as follows:

(1) Other open space must be substituted for that converted so that the process of substitution results in no effective loss of open space in the neighborhood or community. No land already publicly owned may be used for substitution purposes.

(2) The fair market value of the substituted land must be at least equal to the fair market value (at highest and best use) of the project property to be converted, plus any severance damage to any project property to remain in open space use.

(3) The substituted land must be of as nearly as feasible equivalent usefulness and location. In other words, the substitute generally serves the same people and provides equivalent or a better quantity and quality of open space service.

(4) Open space land conversions generally involve change in land use to other public purposes. However, requests for conversions to nonpublic uses will be considered on the basis of community-wide benefit to be derived from conversion.

(5) Conversions that would involve the open market disposal of one site and the subsequent purchase of a new site will require specific justification to demonstrate how the growth or development patterns for the future will not support retention of the original site in public ownership in anticipation of future open space requirements. It is the purpose of this requirement to discourage communities from selling existing open space sites in order to obtain revenues for the purchase of other projects.

(6) Great weight is placed on the relationship of a proposed conversion to the comprehensive plan and its open space and recreation element. Evidence must be submitted supporting the determination that the conversion is needed "for the orderly development and growth of the urban area" and "in accord with the then applicable comprehensive plan." Review and certification by the appropriate planning bodies will be required to meet this condition.

(7) The applicant shall submit a resolution of its governing body authorizing or approving the proposed conversion. HUD may, at its option, require additional evidence regarding the proposed conversion, including evidence that notice of the proposed conversion has been given to the general public by such means as publication in a newspaper of general circulation in the area and/or by public hearings.

(8) Substitute land to be acquired by an applicant for the purpose of meeting HUD conversion requirements, must be acquired and used under terms and policies applicable to the program, including policies for land acquisition, relocation, and nondiscrimination.

(9) No conversions will be approved that would result in an additional Federal grant.

(10) When a superior authority utilizes its eminent domain powers to acquire assisted land, the principles set out above so far as they relate to the substitution of other open space land of at least equal fair market value and of as nearly feasible equivalent usefulness and location will apply. A finding that the use of substituted land will be in accord with the then applicable comprehensive plan must be made and HUD approval for acquisition of the proposed substitute land is required.

(g) *Transfers to another public body.* The applicant may not transfer any of its interest in open space land to another public body unless the proposed transferee enters into a contract with HUD agreeing to be bound by the applicable terms and conditions of the grantee's contract with HUD.

§ 540.251 Waivers.

Any requirement of this subpart may be waived by the Secretary of Housing and Urban Development or as otherwise specifically redelegated so long as such waiver would not violate any requirement of Federal law.

SUBCHAPTER C—COMMUNITY FACILITIES

PART 550—NEIGHBORHOOD FACILITIES

Sec.

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AUTHORITY: The provisions of this Part 550 are issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d).

§ 550.100 Statement of applicable law.

Section 404(a) of the Housing and Urban Development Act of 1965, 42 U.S.C. 3074(a), provides that financial assistance extended to any applicant under the Neighborhood Facilities Grant Program under section 703 of the Act, 42 U.S.C. 3103, may include grants for relocation payments made on such terms and conditions and subject to such limitations as are set forth in section 114 (b), (c), and (d) of the Housing Act of 1949, as amended, 42 U.S.C. 1465 (b), (c), and (d). Section 516 of the Housing and Urban Development Act of 1968, 42 U.S.C. 1465(c), amends section 114(c) by expanding the relocation payments provisions applicable to the programs of the Department of Housing and Urban Development.

§ 550.101 Definitions.

For the purpose of the regulations in this part, the following terms shall mean:

(a) *Actual direct loss of property.* Actual loss in the value of the property (exclusive of goods or other inventory kept for sale) sustained by the claimant by reason of the disposition or abandonment of the property resulting from the claimant's displacement. A loss resulting from damage to the property while being moved is not included.

(b) *Business concern.* A corporation, partnership, individual, or other private entity, including a nonprofit organization, engaged in some type of business, professional, or institutional activity necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession, or institution. (Also see "Small Business concern.")

(c) *Claimant.* An individual, family or business concern, as defined in this section; or, in the case of a claim for a relocation payment for settlement costs, an owner (or joint owners), other than a public entity, of real property, or interest therein, transferred to the Public Body or to the nonprofit agency.

(d) *Family.* Two or more persons related by blood, marriage, or adoption, who are living together in a single dwelling unit.

(e) *Federal Grant Contract.* A contract between the Federal Government and the Public Body for a grant under section 703 of the Housing and Urban Development Act of 1965.

(f) *HUD.* The Secretary of Housing and Urban Development or his delegate.

(g) *Individual.* A person who is not a member of a family. An elderly individual is an individual 62 years of age or over at the time of displacement. A handicapped individual is an individual who has a physical impairment which is expected to be of long-continued and indefinite duration and which substantially impedes his ability to live independently.

(h) *Moving expenses*—(1) *Individuals and families.* Costs of packing, storing (for a period of 1 year or less), carting, and insuring of property and incidental costs of disconnecting and reconnecting household appliances.

(2) *Business concerns.* Costs of dismantling, crating, storing (for a period of 1 year or less), transporting, insuring, reassembling, reconnecting, and reinstalling of property (including goods or other inventory kept for sale), exclusive of the cost of any additions, improvements, alterations, or other physical changes in or to any structure in connection with effecting such reassembly, reconnection, or reinstallation.

(i) *Nonprofit agency.* A nonprofit corporation, association, or other private entity engaged in carrying out a project under the continuing control of the Public Body.

(j) *Project.* Undertakings and activities of the Public Body or the nonprofit agency in connection with the development of a neighborhood facility.

(k) *Property.* Tangible personal property, excluding fixtures, equipment, and other property which under State or local law are considered real property, but including such items of real property as the claimant may lawfully remove.

(l) *Public Body.* A local governmental entity authorized to carry out a project and to provide continuing control over the use of the project facilities.

(m) *Relocation payment.* A payment by the Public Body:

(1) To an individual or family, for reasonable and necessary moving expenses and any actual direct loss of property (for which reimbursement or compensation is not otherwise made);

(2) To a business concern, for its reasonable and necessary moving expenses and any actual direct loss of property except goodwill or profit (for which reimbursement or compensation is not otherwise made);

(3) To a small business concern, for its displacement (small business displacement payment);

(4) To or on behalf of a family or elderly individual for relocation adjustment prior to August 1, 1968 (relocation adjustment payment); or to or on behalf of a family or elderly or handicapped individual on or after August 1, 1968 (additional relocation payment).

(5) To an owner (or joint owners), as defined in § 550.101(c), for settlement costs for which reimbursement or compensation is not otherwise made.

(6) To a family or individual to assist an owner-occupant of a one- or two-family dwelling to purchase and occupy a replacement dwelling on or after August 1, 1968 (replacement housing payment).

(n) *Settlement costs.* (1) Recording fees, transfer taxes, and similar expenses incidental to the transfer of real property to the Public Body or to the nonprofit agency;

(2) Penalty costs for prepayment of any mortgage encumbering such real property; and

(3) The pro rata portion of real property taxes and public service charges allocable to a period subsequent to the date of vesting of title, or the effective date of the acquisition of such real property by the Public Body or by the nonprofit agency, whichever is earlier.

(o) *Small business concern.* A business concern (other than a nonprofit organization) which during the base period had:

(1) Average annual net earnings before income taxes of less than $10,000; and

(2) In the case of displacements prior to June 15, 1966, average annual gross receipts or sales in excess of $1,500; or, in the case of displacements on and after June 15, 1966, average annual gross receipts or sales in excess of $1,500 together with average annual net earnings before income taxes in excess of $500, or average annual gross receipts or sales in excess of $2,500.

Earnings for the purpose of this paragraph (o) include salaries, wages, or other compensation received by an owner of the concern or any member of his household related to him. The term "owner" as used in the previous sentence includes the sole proprietor in a sole proprietorship, the principal partners in a partnership, and the principal stockholders of a corporation, as determined by HUD. The term "base period" shall mean the 2 tax years immediately preceding displacement (or, if the business concern is not in business that long, such other period as may be approved by HUD): *Provided,* That if a business concern does not qualify as a small business concern under this paragraph (o) based upon gross receipts or sales during the 2 tax years immediately preceding displacement and the Public Body finds that the concern's business activity during such period was not representative, the base period shall be the third and fourth tax years immediately preceding displacement.

§ 550.102 Relocation payments by the Public Body.

The Public Body shall make relocation payments to or on behalf of eligible claimants in accordance with and to the full extent permitted by the regulations in this subpart: *Provided,* That for each Federal Grant Contract the Public Body may elect whether to make payments for moving expenses in excess of $25,000 in accordance with § 550.112(a)(2). Relocation payments made in accordance with the regulations in this part and pursuant to a Federal Grant Contract are reimbursable in full to the Public Body as a grant under section 703 of the Housing and Urban Development Act of 1965.

§ 550.103 Eligibility conditions—moving expenses, actual direct loss of property, and settlement costs.

(a) *Moving expenses and actual direct property loss.* A claimant is deemed displaced by the project and is eligible for a relocation payment for moving expenses and actual direct loss of property if:

(1) The project necessitates vacation of real property by the claimant on or after August 10, 1965; and

(2) The claimant is an occupant of the real property on the date of execution of a Federal Grant Contract authorizing the project or, if HUD concurrence is given for the commencement of project activities causing the displacement prior to HUD approval of a Federal Grant Contract, the date of such concurrence (provided that in the latter case a Federal Grant Contract for the project is thereafter executed): *Provided,* That whenever real property is acquired and a Federal Grant Contract is executed, a claimant who is an occupant at the time of such acquisition is also deemed displaced by the project.

(b) *Moving expenses—outdoor advertising display.* Notwithstanding the fact that a business concern may not be doing business on the project site, and subject to all other eligibility requirements of paragraph (a) of this section, a business concern shall be entitled to a relocation payment for moving expenses with respect to its outdoor advertising displays required, in the determination of the Public Body, to be removed from the project site.

(c) *Settlement costs.* A claimant is deemed displaced by the project and is eligible for a relocation payment for settlement costs if (1) he is the owner of the real property on or after August 10, 1965, and at the time of the transfer of title to the Public Body or to the nonprofit agency, and (2) the transfer of title to the real property occurs on or after the date of execution of a Federal Grant Contract authorizing the acquisition of the real property or, if HUD concurrence is given for the acquisition of the real property prior to its approval of a Federal Grant Contract, on or after the date of such HUD concurrence: *Provided,* That a Federal Grant Contract for the project is thereafter executed.

(d) *Temporary on-site move.* No relocation payment shall be made to a claimant for a temporary move within the project site.

§550.104 Eligibility conditions—small business displacement payment.

A small business concern which satisfies the eligibility conditions of § 550.103 (a) governing moving expenses and actual direct loss of property is eligible for a small business displacement payment if the concern:

(a) Is not a part of an enterprise having two or more establishments outside the project site;

(b) Has filed with the Internal Revenue Service income tax returns for the base period, as defined in § 550.101(o); or has furnished such other evidence of earnings as may be approved by HUD; and

(c) Was doing business on the project site on the date of the approval by the Public Body of an application for a neighborhood facilities grant.

§ 550.105 Eligibility—relocation adjustment payment; additional relocation payment; replacement housing payment.

(a) *Relocation adjustment payment.* A family or elderly individual who satisfies the eligibility conditions of § 550.103 (a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, prior to August 1, 1968, is eligible for a relocation adjustment payment if the claimant:

(1) Is unable to secure a suitable dwelling unit in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling.

(b) *Additional relocation payment.* A family or elderly or handicapped individual who satisfies the eligility conditions of § 550.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for an additional relocation payment, if the claimant:

(1) Is unable to secure a suitable dwelling in (i) a low-rent housing project assisted under the United States Housing Act of 1937, as amended, 42 U.S.C. 1401 et seq. (or a State or local program found by HUD to have the same general purposes) or (ii) a dwelling unit assisted under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s(a); and

(2) Has moved to a decent, safe, and sanitary dwelling:

Provided, That an additional relocation payment not to exceed $500 in the first 12 months and $500 in the second 12 months may be made on a lump-sum basis or on other than a monthly basis in cases in which other than monthly payments are determined warranted by HUD.

(c) *Replacement housing payment.* A family or individual who satisfies the eligibility conditions of § 550.103(a), governing eligibility for a relocation payment for moving expenses and actual direct loss of property, on or after August 1, 1968, is eligible for a replacement housing payment if the claimant:

(1) Is the owner of real property acquired for a project assisted under section 703 of the Housing and Urban Development Act of 1965, 42 U.S.C. 3103;

(2) Has occupied a single- or two-family dwelling located on the real property for not less than 1 year prior to the initiation of negotiations for the acquisition of the property;

(3) Does not receive the additional relocation payment provided for by paragraph (b) of this section;

(4) Purchases and occupies a replacement dwelling within 1 year subsequent to the date on which he is required to move from the dwelling acquired for the project; and

(5) Does not receive a payment pursuant to the State law of eminent domain determined by HUD to have substantially the same purpose and effect as would a replacement housing payment, and to be a part of the cost of the project for which Federal financial assistance is available.

§ 550.106 Notice of intention to move.

Except as provided in this section, no relocation payment for moving expenses or actual direct loss of property and no small business displacement payment shall be made to a business concern unless (a) the Public Body has received, at least 30 days but not earlier than 90 days prior to the moving date, written notice from the business concern of its intention to move or dispose of the property, which shall be described generally in the notice, and the date of such intended move or disposition, and (b) the business concern has permitted, at all reasonable times, the inspection by or on behalf of the Public Body of such property at the site from which the business concern is displaced. For the purpose of this section, "moving date" shall mean the date on which the first item of property is intended to be moved or disposed of. The Public Body may make a relocation payment notwithstanding nonreceipt of such timely notice only if the Public Body has determined that there was reasonable cause for the failure of the business concern to give such notice, and the Public Body has adequately verified the facts pertaining to the move or disposition and the requested relocation payment.

§ 550.107 Administration of relocation payments.

(a) *Conditions for relocation payment.* The Public Body (or, if the Public Body is the municipality, the board or commission responsible for carrying out the project or, if there is no such board or commission, the principal executive officer of the municipality) shall approve a schedule (Form HUD-6148) of average annual gross rentals for standard housing in the locality for determining the amount of relocation adjustment payments and additional relocation payments in accordance with § 550.112(c) and (d), and a separate schedule (Form HUD-6155) for determining the average price of standard sales housing in a locality, and any other conditions under which the Public Body will make relocation payments. The schedules and conditions shall be consistent with the regulations in this subpart and shall be available in written form to claimants in the relocation office of the Public Body.

(b) *Notice to claimants.* The Public Body shall furnish all claimants who are anticipated to be displaced with an

informational statement advising the claimant of (1) the availability of relocation payments and (2) the office where the conditions under which relocation payments will be made are available for inspection.

(c) *Action on claim—finality.* The Public Body is initially responsible for determining the eligibility of a claim for, and the amount of, a relocation payment and shall maintain in its files complete and proper documentation supporting the determination. The determination on each claim shall be made or approved either by the governing body of the Public Body or by the principal executive officer of the Public Body or his duly authorized designee. The determination by the Public Body or any redetermination by HUD shall be final and conclusive with respect to the rights of any claimant, and not subject to redetermination by any court or any other officer. Subject to the requirements of this paragraph (c), the Public Body may permit a third-party contractor, responsible for relocation activities, to examine and recommend action on a claim and to disburse funds in payment of a claim which has been approved by the Public Body.

(d) *Prompt payment.* A relocation payment shall be made by the Public Body as promptly as possible after a claimant's eligibility has been determined in accordance with the regulations of this subpart.

(e) *Setoff against claim.* The Public Body may set off against the claim of an otherwise eligible claimant any financial claim the Public Body or the nonprofit agency may have against the claimant arising out of the use of the real property.

(f) *Approval by HUD—business concerns.* No relocation payment for moving expenses or settlement costs, or both, in excess of $10,000 shall be made without approval by HUD.

(g) *Accounts and records.* Accounts and records shall be maintained as prescribed by HUD and shall be subject to inspection or audit at all reasonable times by HUD. Records pertaining to eligibility of relocation payments, including all claims, receipted bills or other documentation in support of a claim, and records pertaining to action on a claim shall be retained by the Public Body for not less than 3 years after the completion of the project.

§ 550.108 Fixed relocation payments to individuals and families for moving expenses.

(a) *Schedule of fixed payments.* A Public Body intending to pay fixed amounts in lieu of payments for reasonable and necessary moving expenses and actual direct loss of property of eligible individuals and families shall prepare a schedule of the fixed amounts which it proposes to pay. The schedule shall contain a statement indicating that the Public Body intends to permit eligible individuals and families to claim reimbursement for their actual moving expenses and actual direct loss of property.

(b) *Schedule provision.* (1) A proposed schedule of fixed payments to eligible individuals and families owning furniture shall provide for a graduated scale of payments related to the number of all rooms occupied by the claimant except bathrooms, hallways, and closets, which payments shall not exceed the lowest normal charge for carting expenses for the average time required to move personal effects: *Provided,* That in any event the payments shall not exceed the maximum reimbursement to eligible individuals or families provided in the regulations in this subpart.

(2) Fixed payments to eligible individuals or families not owning furniture shall not exceed: (i) $5 for any individual, (ii) $10 for any family.

(c) *Administration of fixed payments.* Eligible individuals or families may be paid the amount provided in the schedule of fixed payments approved by HUD upon receipt of a properly completed claim. A fixed payment shall be in full settlement for the claimant's moving expense and any actual direct loss of property. If the joint occupants of a single dwelling unit at the project site move to two or more locations and consequently submit more than one claim, an eligible claimant for a fixed payment may be paid only his reasonable prorated share (as determined by the Public Body) of the total fixed payment applicable to such dwelling unit, and the total of fixed payments made to all such claimants moving from such dwelling unit shall not exceed the total fixed payment applicable to such dwelling unit.

§ 550.109 Determining moving expenses of business concern.

(a) *Submission of bids prior to moving date.* No claim for a relocation payment for moving expenses in excess of $500 shall be allowed for costs incurred by a business concern unless the concern has submitted to the Public Body, at least 15 days prior to the commencement of the move, a bid from three reputable firms covering the moving costs involved. Whenever it is not feasible to obtain three bids for any category of work, a lesser number of bids shall be submitted, together with a written justification by the concern; and no relocation payment shall be allowed in such cases unless the Public Body has approved the justification. The Public Body, with HUD concurrence, may waive any requirement of this paragraph (a) for good cause.

(b) *Payment not to exceed low bid.* Payment to a business concern for moving expenses shall not exceed the amount of the low bid submitted in accordance with paragraph (a) of this section unless the bid requirement has been waived in accordance with paragraph (a) of this section.

§ 550.110 Determining actual direct loss of property.

(a) The amount of actual direct loss of any item of property claimed shall be determined as follows:

(1) The fair market value of the property for continued use at its location prior to the displacement shall be ascertained by the claimant by an appraisal satisfactory to the Public Body, except as provided in subparagraph (2) of this paragraph.

(2) If the value of the property for which actual direct loss is claimed does not warrant the expenses of an appraisal, then its fair market value for such continued use shall be computed as follows: The original cost of the item to the claimant (exclusive of installation cost), multiplied by the figure obtained by dividing the period of the remaining useful life of the property at the date of removal, by the period of the normal useful life of the property at the date of its acquisition by the claimant.

(3) The property shall be disposed of by a bona fide sale (as determined by the Public Body) at the highest price offered after reasonable efforts have been made over a reasonable period of time to interest prospective purchasers. A trade-in of the property may be considered a bona fide sale, and the trade-in allowance, exclusive of any amount of discount that would be allowed on the price of the property being acquired in the absence of the trade-in, shall be deemed the amount realized upon the sale of the property.

(4) If the amount realized from the sale, after deducting ordinary and reasonable expenses of the sale, is less than the fair market value for such continued use, the difference between the net amount realized and the fair market value is the amount of actual direct loss of the property. Expenses of sale include such items as sale commissions, auctioneer's fees, advertising costs, and similar charges.

(b) If a bona fide sale is not effected because no offer is received for the property, after reasonable efforts have been made over a reasonable period of time to sell it, then its fair market value for continued use, ascertained as provided in this section, is the amount of actual direct loss of the property.

(c) The cost of appraisals to determine actual direct loss of property, if made by or in behalf of the claimant, is not allowable as part of a claim.

§ 550.111 Filing of claims.

(a) *Form of claim.* To obtain a relocation payment, a claimant shall file a written claim with the Public Body on the appropriate HUD forms.

(b) *Documentation in support of claim.* A claim shall be supported by the following:

(1) If for moving expenses, except in the case of a fixed payment, a receipted bill or other evidence of such expenses. By prearrangement between the Public Body, the claimant, and the mover, confirmed in writing by the Public Body, the claimant may present an unpaid moving bill to the Public Body, and the Public Body may pay the mover directly.

(2) If for actual direct loss of property, written evidence thereof, which may include appraisals, certified prices, copies of bills of sale, receipts, canceled checks, copies of advertisements, offers to sell, auction records, and such other records

as may be appropriate to support the claim.

(3) In any other case, such documentation as may be required by the Public Body, which may include income tax returns, withholding or informational statements, and proof of age.

(c) *Time for filing claims.* A claim for moving expenses, actual direct loss of property, or a small business displacement payment shall be submitted to the Public Body within a period of 6 months after the displacement of the claimant. A claim for settlement costs shall be submitted within 6 months after the costs have been incurred. A claim for a relocation adjustment payment or for an additional relocation payment shall be submitted within a period of 60 days after the displacement of the claimant. A claim for a replacement housing payment shall be submitted within 18 months after the displacement of the claimant. The time limitations in this paragraph (c) may be waived by the Public Body for good cause, with HUD concurrence.

§ 550.112 Limitation on amount of relocation payments.

(a) *Moving expenses and loss of property—(1) Maximum amount—individuals or families.* The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to an individual or family shall not exceed $200. The maximum relocation payment that may be made or recognized for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, to two or more unrelated individuals occupying the same dwelling unit shall not exceed $200.

(2) *Maximum amount—business concerns.* The maximum relocation payment that may be made or recognized in the case of a business concern for moving expenses and actual direct loss of property, for which reimbursement or compensation is not otherwise made, shall not exceed $3,000: *Provided,* That if the total of the actual moving expenses is greater than $3,000, the maximum relocation payment that may be made or recognized in the case of a business concern, for which reimbursement of compensation is not otherwise made, shall be the sum of:

(i) The total actual moving expenses or $25,000 whichever is less; and

(ii) A percentage of the actual moving expenses in excess of $25,000, which percentage shall be the same as the percentage of project cost paid for by the Federal Grant under the terms of the Federal Grant Contract: *Provided,* That the Public Body makes a cash payment to the business concern equal to the remainder of the actual moving costs in excess of $25,000, which payment shall not constitute any portion of the local share of the project cost.

(3) *Maximum moving distance.* If a business concern moves beyond 100 miles from the boundary of the city, town, township, village, or county, as the case may be, in which the project is carried out, a relocation payment for its moving expenses may not be made in excess of the reasonable and necessary expenses for moving such distance of 100 miles.

(b) *Small business displacement payment.* A small business displacement payment shall be $2,500.

(c) *Relocation adjustment payment.* The total relocation adjustment payment that may be made for a family or elderly individual shall be an amount not to exceed $500 which, when added to 20 percent of the annual income of the family or individual at the time of displacement, equals the average annual gross rental required for a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the project is carried out or in other areas generally not less desirable in regard to public utilities and public and commercial facilities), as determined by the Public Body.

(d) *Maximum amount—additional relocation payment.* The total additional relocation payment that may be made to a family or elderly or handicapped individual shall consist of monthly payments over a period not to exceed 24 months and shall be paid in an amount (not to exceed $500 in the first 12 months and not to exceed $500 in the second 12 months) which, when added to 20 percent of the annual income of the family or individual at the time of displacement, shall be equal to the average annual gross rental required to secure a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the project is carried out or in other areas not generally less desirable in regard to public utilities and commercial facilities), as determined by the Public Body.

(e) *Maximum amount—replacement housing payment.* The total replacement housing payment that may be made for a family or individual eligible for a replacement housing payment under § 550.105(c) shall be an amount not to exceed $5,000, which, when added to the acquisition payment, shall be equal to the average price required for purchase of a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, which is reasonably accessible to public services and places of employment, and which is available on the private market.

§ 550.113 Determinations in condemnation proceedings.

Notwithstanding any other provision of the regulations in this subpart, when property is acquired by proceedings in condemnation, and the amount of the judgment includes an allowance for any of the expenses included within the definition of relocation payment appearing at § 550.101(m), the portion of the judgment representing compensation for these expenses, if separately stated, shall be entitled to recognition as a relocation payment in an amount not to exceed the applicable dollar limitations of § 550.112: *Provided,* That the allowance for actual direct loss of property makes no compensation for loss of goodwill or profit.

PART 555—GRANTS FOR BASIC PUBLIC WATER AND SEWER FACILITIES

Sec.

555.1 Purpose.
555.2 Definitions.
555.3 Grants for basic public water and sewer facilities.
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555.9 Information, application forms, and applications.

AUTHORITY: The provisions of this Part 555 issued under secs. 702, 705, 79 Stat. 490, 492; 42 U.S.C. 3102, 3105.

§ 555.1 Purpose.

The purpose of section 702 of the Housing and Urban Development Act of 1965 (79 Stat. 490, 42 U.S.C. 3102) is to assist the large and small communities throughout the Nation to serve the needs of their citizens and to promote efficient and orderly community growth and development by making available Federal grant assistance to construct adequate basic public water and sewer facilities.

§ 555.2 Definitions.

(a) "Act" shall mean the Housing and Urban Development Act of 1965 (Public Law 89-117, approved August 10, 1965).

(b) "Development cost" shall mean the cost of constructing a basic public water or sewer facility and the cost of acquiring the land on which it is located, including site improvements necessary to permit the use of the land as a site for the facility.

(c) "Local public bodies and agencies" shall mean any public corporate bodies or political subdivisions; public agencies or instrumentalities of one or more States (including public agencies and instrumentalities of one or more municipalities or other political subdivisions of one or more States); Indian tribes; or boards or commissions established under the laws of any State to finance specific capital improvement projects.

(d) "Secretary" shall mean the Secretary of Housing and Urban Development, or an officer authorized to perform the functions of the Secretary.

(e) "State" shall mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, and territories and possessions of the United States.

§ 555.3 Grants for basic public water and sewer facilities.

(a) Grants of not more than 50 percent of the development cost of eligible basic public water or sewer facility projects may be made to local public bodies and agencies.

(b) Grants of not more than 90 percent of the development cost of an eligible sewer facility project may be made if the project is to serve a community

having a population of less than 10,000, according to the most recent decennial census, which is situated within a metropolitan area, and if such community is unable to finance the construction of the sewer facility without the increased grant, and if in such community (1) there does not exist a public or other adequate sewer facility which serves a substantial portion of the inhabitants of the community and (2) the rate of unemployment is, and has been continuously for the preceding calendar year, 100 percent above the national average.

§ 555.4 Eligible projects.

(a) Grant assistance is available to construct new facilities and to enlarge or improve existing facilities of the following types:

(1) Basic public water facilities, including facilities for the storage, supply, treatment, purification, or distribution of water for domestic, commercial, or industrial use; and

(2) Basic public sewer facilities, including sanitary sewer systems for the collection, transmission, and discharge of liquid wastes; and storm sewer systems for the collection, transmission, and discharge of water caused by rainfall or ground water runoff.

(b) The basic public water or sewer facility for which a grant may be made may include all parts of the water or sewer facility except household connections and the local collection or distribution laterals.

(c) Grant assistance will not be provided to finance ordinary repairs or maintenance of existing facilities.

(d) Grant assistance will not be provided for the construction of "treatment works" as defined in the Federal Water Pollution Control Act (70 Stat. 506, 23 U.S.C. 1173).

§ 555.5 Requirements for assistance.

(a) An eligible project must be necessary to provide adequate water or sewer facilities for, and contribute to the improvement of the health or living standards of, the people in the community to be served by the project. The project must be—

(1) Designed so that an adequate capacity will be available to serve the reasonably foreseeable growth needs of the area;

(2) Consistent with a program for a unified or officially coordinated areawide water or sewer facilities system as part of the comprehensively planned development of the area; and

(3) Necessary to orderly community development.

(b) Prior to July 1, 1968, the Secretary may, in his discretion, make a grant with respect to an eligible project if the program for an areawide water or sewer facilities system is under active preparation but not yet completed, if the facility for which assistance is sought can reasonably be expected to be required as part of such an areawide program, and there is an urgent need for the facility.

(c) The Secretary is authorized to make a grant with respect to an eligible project for a sewer facility without regard to the requirements contained in this section in the case of a community which is eligible for an increased grant under § 555.3(b).

§ 555.6 Labor standards.

All laborers and mechanics employed by contractors or subcontractors on projects assisted by a grant made pursuant to section 702 of the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours Standards Act (40 U.S.C. 327–332). The Secretary of Labor has, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176, 5 U.S.C. 133z–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c). No such project shall be approved without first obtaining adequate assurance that these labor standards will be maintained upon the construction work.

§ 555.7 Certification of projects for sewer facilities.

Grant assistance may not be made available for a project for a sewer facility unless the Secretary of the Interior certifies to the Secretary that any waste material carried by the facility will be adequately treated so as to meet applicable Federal, State, interstate, or local water quality standards before such waste material is discharged into any public waterway.

§ 555.8 Application of other Federal laws.

(a) Grants authorized by section 702 of the Act are subject to provisions of:

(1) Title VI of the Civil Rights Act of 1964 (Public Law 88–352, 42 U.S.C. 2000d), which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance; and

(2) Title IV of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071–3074), which requires that, as a condition of eligibility for assistance under section 702 of the Act, the applicant will follow certain prescribed policies in the acquisition of real property by eminent domain.

(b) An applicant for grant assistance under section 702 of the Act will be required to furnish satisfactory assurance that it will comply with the requirements and policies referred to in paragraph (a) of this section.

§ 555.9 Information, application forms, and applications.

Information and application forms may be obtained from, and applications submitted to, the Regional or Area Office of the Department of Housing and Urban Development which serves the area in which the applicant is located.

PART 556—EVALUATION OF PRELIMINARY APPLICATIONS FOR BASIC WATER AND SEWER FACILITIES GRANTS

Sec.

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556.4 Criteria for evaluating preliminary applications.
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556.16 Community development.
556.18 Further application procedures.

AUTHORITY: The provisions of this Part 556 issued under secs. 702 and 705, 79 Stat. 490, 492; 42 U.S.C. 3102, 3105.

§ 556.1 Scope.

This part sets forth the criteria and procedures used in evaluating preliminary applications for Federal grant assistance to local public bodies and agencies for basic water and sewer facilities under the Act. The evaluation of preliminary applications described in this part does not result in a final decision by the Secretary to extend grant assistance to particular projects for the construction of such facilities. Further application procedures are described in § 556.18.

§ 556.2 Definitions.

The terms "Act", "development cost", "local public bodies and agencies", "Secretary", and "State" shall have the meanings given in § 555.2 of this chapter.

§ 556.3 Preliminary applications for assistance.

(a) Preliminary applications for grants for water and sewer facilities shall be submitted on Standard Form 101, to the appropriate HUD regional or area office having jurisdiction over the geographic area involved in the application. Copies of this form may be obtained on request from the regional or area office.

(b) In general, Standard Form 101 requests the legal name and address of the applicant (an eligible local public body or agency); a brief description of the proposed project and its purpose; a list of the localities to be served; the public interest and necessity for the project; and the proposed method of financing including the total project cost and the grant amount requested.

§ 556.4 Criteria for evaluating preliminary applications.

Criteria for evaluating preliminary applications are divided into the following major categories:

(a) Orderly growth and development.
(b) Financial need.
(c) Housing.
(d) Health.
(e) Local job and business opportunity.
(f) Community development.

The elements considered in each category are described in the following sections, and the method of assigning rating points to each element or category is set forth. Points are awarded to each element or category in the following manner unless otherwise specifically indicated: If a statement under a particular element or category applies specifically to the project application under consideration, the application is awarded the number of points assigned to that statement. If no statement applies, no points are awarded to the application for that element.

§ 556.6 Orderly growth and development.

(The value of this category is the sum of the values of paragraphs (a) to (d) of this section.)

(a) *Service area need.* (Select one):

(1) Is to rehabilitate an existing system with no increase in the area served	1
(2) Is to increase the existing area served with or without rehabilitation of the existing system	5
(3) Is to provide a basic system for a community which is presently unserved	10

"Service area" means the total geographic area for which the applicant has legal responsibility to provide services and facilities. "Rehabilitation" refers only to major items of construction; it does not include normal maintenance and repair. The phrase "increase the area served" refers to the provision of facilities in those portions of the service area which are not currently part of the existing system. A "basic system" is one which provides facilities within the service area where no facilities currently exist, but existing or proposed supporting facilities, e.g., water supply or sewage treatment, may be provided by other units of government.

(b) *Capacity for future growth.* (Select one):

(1) The project provides for the reasonable foreseeable growth needs of the area	1
(2) The project provides for the reasonable foreseeable growth needs of the area in addition to providing for an anticipated urgent need of the applicant in the next 2 to 5 years	5
(3) The project provides for the reasonable foreseeable growth needs of the area in addition to meeting an immediate critical need	10

"Reasonable foreseeable growth needs" are determined by the applicant as reflected in the functional planning and programing for the area. "Urgent need" refers to a need which, if not corrected in the next 5 years, can be expected to result in a critical need. A "critical need" refers to a need that should be satisfied immediately, e.g., a desperate need for water including any need to import water, or a need to control frequent inundations or to eliminate sources of epidemics.

(c) *Planning and programing.*

If the statement of goals and objectives prepared by the areawide planning organization has been endorsed or adopted, as provided by State law, by the unit(s) of general-purpose government for the area in which the project is located, the application will be awarded the following number of points	5

(d) *State and regional/metropolitan clearinghouse concern.*

If the proposed project has high priority for the State or regional/metropolitan program, based on the State or regional/metropolitan clearinghouse review and comment, the application will be awarded the following number of points	5

§ 556.8 Financial need.

(Value of this category is the sum of the values of paragraphs (a) to (c) of this section.)

(a) If the project cannot be financed without the requested Federal assistance, the application will be awarded the following number of points	5

Ability to finance the project on the basis of revenue bonds is computed at 6 percent interest over 25 years. If the estimated net revenue in an average year exceeds the total debt service costs for that year by a factor of 1.25, it is assumed that the project can be financed without the requested Federal aid, and the points will not be awarded.

(b) Relative median family income: The median family income of the service area of the proposed project compared to the median family income of the State in which the project is to be located is: (Select one):

(1) $501–$1,500 above	2
(2) $1–$500 above	4
(3) $0–$500 below	6
(4) $501–$1,500 below	8
(5) $1,501 or more below	10

Median family incomes for the service area and the State are to be obtained by utilizing the City-County Data Book or other census data. In those instances where the median family income for the area as determined from the source material appears inconsistent with the Department's knowledge of the community, adjacent area median family incomes will be considered.

(c) Non-Federal financial aid: (Value of this element is the sum of the values of (1) and (2).)

(1) State assistance (grant and/or loan) is being provided to assist in project financing	3
(2) Units of government other than the applicant and a State are providing financial assistance for the project	2

Financing by other units of governments includes grants, loans, or contributions to the construction of the project by units of general- or special-purpose governments other than the applicant and a State.

§ 556.10 Housing.

(The value of this category is the sum of the values of paragraphs (a) and (b) of this section.)

(a) *Decent, safe, and sanitary housing.* (Value of this element is the sum of the values of subparagraphs (1) to (3) of this paragraph.)

The project is necessary for the—

(1) Maintenance of existing decent, safe and sanitary housing	2
(2) Maintenance of existing, or assistance to proposed, decent, safe, and sanitary low and moderate income housing	3
(3) Assistance of significant areas of housing that is less than decent, safe, and sanitary	2

"Decent, safe, and sanitary housing" refers to housing that is in accordance with local housing standards in the area in which the project is to be located. "Low- and moderate-income housing" refers to housing with a fair market value that is equal to or less than the resultant of multiplying the section 235–236 maximum income for a family of four, as established by the Secretary for the county in which the project is located, by a factor of 3. "Low- and moderate-income housing" also refers to housing with an annual rental equal to or less than one-third of such section 235–236 maximum income.

(b) *Accessibility of housing.* (Select one):

Percent of housing in project area that will be accessible on a nondiscriminatory basis to families and individuals with low and moderate income is:

(1) 81–100 percent	10
(2) 61–80 percent	8
(3) 41–60 percent	6
(4) 21–40 percent	4
(5) 20 percent or less	2

As used herein, "nondiscriminatory" means free of legal or social constraints arising from race, creed, color, and national origin.

§ 556.12 Health.

The proposed project is necessary for: (Select one):

(a) Elimination of a potential public health hazard	6
(b) Elimination of a demonstrated public health hazard	13
(c) Elimination of a critical health hazard	18

A "potential public health hazard" refers to a hazard which if not corrected can be expected to result in a dangerous lowering of environmental quality and health standards; e.g., malfunctioning septic tanks, polluted individual wells, or areas subject to inundation not more often than every 5 years but at least once every 10 years. A "demonstrated public health hazard" refers to hazards from existing sources which if not corrected, could result in disease of epidemic proportions (which sources are evidenced by epidemiological studies and reports), contamination of domestic water sources from any cause, the need to import water for any cause, and the inundation of the area more frequently than every 5 years. A "critical public health hazard" refers to a demonstrated public health hazard which must be resolved immediately, e.g., a desperate need for water, control of demonstrated causes of diseases of epidemic proportions, and the inundation

of the area more frequently than once per year.

§ 556.14 Local job and business opportunities.

(Value of this category is the sum of paragraphs (a) to (e) of this section.)

(a) The project is needed for existing or proposed commercial or industrial development	2
(b) During the construction phase of the project, on-the-job training activities will be provided	2
(c) The project will provide job opportunities for underemployed and unemployed persons	2
(d) The project has provisions for small business participation	2
(e) The project has provisions for minority business participation	2

"On-the-job training" refers to union or government sponsored apprenticeship or similar training programs. "Small businesses" refers to those contractors, including supply contractors, whose contractual abilities are limited to $125,000 or less. In addition to information furnished on SF–101, the relationship of the project to commercial or industrial development in the area will be taken into account.

§ 556.16 Community development.

The degree to which the project is necessary for undertaking other publicly supported community development activities	1 to 5

"Community development activities" refers to those publicly supported physical devlopment activities and those related social or economic development activities being carried out or to be carried out within a reasonable period of time in accordance with a locally determined or areawide plan or strategy. Factors taken into consideration may include the project's responsiveness to local needs and objectives, the economies possible through coordinated or joint action, and the degree of support by the appropriate unit(s) of local general-purpose government.

§ 556.18 Further application procedures.

(a) Preliminary applications that receive a comparatively high rating are placed on the potential project list by the regional or area office having jurisdiction over the geographic area to which the application relates. Then, depending upon the relative rating of the preliminary application among other such applications submitted to the area or regional office within any given period, the applicant may be asked to submit further application material, with supporting documentation, so that a final decision on the grant may be reached. Such application material is subject to further reviews to determine compliance of the application with basic eligibility and technical requirements.

(b) The relative rating of the preliminary application and remedial action by applicants are determined as follows: A minimum value that will permit funding within the area office is to be determined on the basis of aggregate scores of rated applications. When an SF–101 fails to receive the prescribed score for inclusion of the project on the potential project list, the application and supporting documents will be returned to the applicant with advice as to areas of deficiency. Remedial action regarding the deficiencies must be undertaken before the proposal may be reconsidered.

Chapter VI—Office of Assistant Secretary for Community Planning and Management [Reserved]

Chapter VII—Community Development Corporation

Subchapter A [Reserved]

Subchapter B—Assistance for New Communities

Part

710 Guarantee of private obligations for financing new community land development.

SUBCHAPTER A [RESERVED]

SUBCHAPTER B—ASSISTANCE FOR NEW COMMUNITIES

PART 710—GUARANTEE OF PRIVATE OBLIGATIONS FOR FINANCING NEW COMMUNITY LAND DEVELOPMENT

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AUTHORITY: The provisions of this Part 710 issued under secs. 413, 7(d), 82 Stat. 517, 79 Stat. 670; 42 U.S.C. 3912, 3535(d).

Subpart A—General

§ 710.1 Statement of applicable law.

(a) The New Communities Act of 1968 (42 U.S.C. 3901–3914) authorizes the Secretary of Housing and Urban Development to guarantee obligations issued by private developers to help finance new community development projects. It also authorizes the Secretary to make grants to State and local public bodies and agencies to supplement the Federal assistance that is otherwise available for certain water, sewer, or open-space projects if these projects are needed or desirable in connection with an approved new community project which will make available a substantial number of housing units for persons of low and moderate income. The amount of such grants may not exceed 20 percent of project costs, and since this is to supplement other Federal assistance, the projects must also meet the applicable requirements for regular grants under section 702 of the Housing and Urban Development Act of 1965, as amended (42 U.S.C. 3102); section 306(a)(2) of the Consolidated Farmers' Home Administration Act, as amended (7 U.S.C. 1926(a)(2)); or title VII of the Housing Act of 1961, as amended (42 U.S.C. 1500–1500e).

(b) The Act (1) amends section 202 (b)(4) of the Housing Amendments of 1955, as amended (42 U.S.C. 1492), to permit public facilities loans without regard to the population limits otherwise applicable for facilities serving a new community development; (2) amends section 24 of the Federal Reserve Act, as amended (12 U.S.C. 371), with regard to the authority of national banks to invest in obligations guaranteed under the Act; and (3) amends section 5(c) of the Home Owners Loan Act of 1933, as amended (12 U.S.C. 1464), with regard to the authority of the Federal savings and loan associations to invest in obligations guaranteed under the Act. The Secretary is also authorized to make comprehensive planning grants under section 701 of the Housing Act of 1954, as amended (40 U.S.C. 461), to official governmental planning agencies for planning in areas where rapid urbanization is expected to occur on land developed or to be developed as a new community approved under the Act.

(c) Additional assistance to new communities may be available under other Federal laws, even though they do not refer specifically to the Act or to new communities. For example, public bodies may receive Federal assistance for water and sewer and open space, schools, urban transit, and other facilities which serve new communities. Federal assistance for private sponsors would generally be available on the same basis as in other communities. For example, qualifying private sponsors may receive assistance for sales, rental, and cooperative housing projects for lower income families pursuant to sections 235 and 236 of the National Housing Act as amended (12 U.S.C. 1715z and 1715z–1).

(d) It is the declared purpose of the Act to encourage the development of new communities that—

(1) Contribute to the general betterment of living conditions through the

improved quality of community development made possible by a consistent design for the provision of homes, commercial and industrial facilities, public and community facilities, and open spaces;

(2) Make substantial contributions to the sound and economic growth of the areas in which they are located;

(3) Provide needed additions to the general housing supply;

(4) Provide opportunities for innovation in housing and community development technology and in land use planning;

(5) Enlarge housing and employment opportunities by increasing the range of housing choice and providing new investment opportunities for industry and commerce;

(6) Encourage the maintenance and growth of a diversified local homebuilding industry; and

(7) Include, to the greatest extent feasible, the employment of new and improved technology, techniques, materials, and methods in housing construction, rehabilitation, and maintenance under programs administered by the Department of Housing and Urban Development with a view to reducing the cost of such construction, rehabilitation, and maintenance, and stimulating the increased and sustained production of housing under such programs.

§ 710.2 Definitions.

For the purpose of the regulations in this part, the following terms shall mean:

(a) *Act.* The New Communities Act of 1968 (title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 3901–3914).

(b) *Secretary.* The Secretary of Housing and Urban Development or his authorized representatives.

(c) *Assistant Secretary.* The Assistant Secretary for Community Planning and Management or his authorized representatives.

(d) *Developer.* The private entity, approved by the Secretary to carry out a new community project, which issues obligations guaranteed or to be guaranteed under the Act.

(e) *Project.* The activities and undertakings required to carry out a plan or plans for a new community approved by the Secretary under the Act.

(f) *Land development.* The process of grading land, making, installing, or constructing water lines and water supply installations, sewer lines, and sewage disposal installations, steam, gas, and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, and other installations or work, whether on or off the site, which the Secretary deems necessary or desirable to prepare land for residential, commercial, industrial, or other uses, or to provide facilities for public or common use. The term "land development" shall not include any building unless it is (1) a building which is needed in connection with a water supply or sewage disposal installation or a steam, gas, or electric line or installation, or (2) a building, other than a school, which is to be owned and maintained jointly by the residents of the new community or is to be transferred to public ownership, but not prior to its completion.

(g) *Actual costs.* The costs (exclusive of rebates or discounts) incurred by a new community developer in carrying out the land development assisted under the Act. These costs may include amounts paid for labor, materials, construction contracts, land planning, engineers' and architects' fees, surveys, taxes, and interest during development, organizational and legal expenses, such allocation of general overhead expenses as is acceptable to the Secretary, and other items of expense incidental to development which may be approved by the Secretary. If the Secretary determines that there is an identity of interest between the new community developer and a contractor, there may be included as a part of actual costs an allowance for the contractor's profit in an amount deemed reasonable by the Secretary.

§ 710.3 Information.

General information on the new community program and instructions for applying for assistance under this program, as well as information on other Federal programs which are related to new communities, may be obtained from the Assistant Secretary for Community Planning and Management, U.S. Department of Housing and Urban Development, Washington, D.C. 20410.

Subpart B—New Community Criteria and Standards

§ 710.5 General criteria for new communities.

In determining whether a given undertaking, otherwise eligible for assistance and consistent with the purposes of the Act, is a new community, the Secretary will apply the following general criteria:

(a) A new community must include most, if not all, of the basic activities normally associated with a city or town: Housing, education, cultural facilities, transportation, commerce, industry, and recreation.

(b) It must combine these varying activities in a balanced and harmonious whole, with a view to creating an environment that is an attractive place to live, work, and shop.

(c) It must have a favorable impact upon the growth and development of the area within which it is located in terms of conserving land, minimizing transportation problems, extending the range of housing choice for all who live or may in the future live in the area, promoting needed economic development, and creating new job opportunities.

(d) It must be designed for the fullest possible range of people and families of different compositions and incomes and must be open to members of all national, ethnic, and racial groups.

§ 710.6 Specific characteristics of a new community.

(a) *Size, location, and internal diversity*—(1) *Size.* No minimum or maximum size is prescribed for a new community qualifying under the Act, but its size must be significant in comparison with existing developments and communities in the area in which it is located. A new community that would be too small to have an appreciable impact in or near a metropolitan area might qualify for assistance if it were located in a rural area and were approximately as large as other communities in the area.

(2) *Location.* A new community may be located in any kind of area: Urban urbanizing, or rural. Wherever located, a new community must have accessibility to highways, airports, or other public transportation facilities commensurate with its size and the anticipated requirements of its population, industry, and commerce.

(3) *Relationship to surrounding development.* If a new community involves development which adds to an existing community or to an existing residential, commercial, or industrial area, both the old and new development will be considered in determining whether the new community qualifies for assistance under the Act. To qualify, however, the new development must be substantial, and the old and new elements must be carefully integrated. The resulting total new community must be planned as a whole and must be demonstrably different from that which existed before. An addition to existing development of housing alone, or commercial or industrial facilities alone, will generally not be considered sufficient for this purpose. Whether or not the new community incorporates existing development, it should take account of this development in internal planning and site location decisions.

(4) *Internal diversity.* Although a new community need not be completely self-sufficient, it must provide in a single area the housing, public and commercial facilities, and job opportunities normally associated with a city or town. In determining the degree of internal diversity for a given site, consideration will be given to adequacy of existing or projected facilities in the immediate area. However, the community may not consist simply of housing or of housing with a minimum of commercial facilities serving only the immediate needs of people for neighborhood shopping. Nor may a new community be predominantly an industrial or commercial development, with a minimum supply of new housing.

(b) *Internal development plan.* A new community must have a general plan and program for its ultimate development designed to create and maintain an attractive and viable environment responsive to human needs. Among the factors which the Secretary will consider in evaluating the plan are the following:

(1) Suitability of the site for the proposed uses, harmonious relationship of these uses with surrounding development, and their protection against adverse physical encroachment;

(2) Effectiveness of the land use and transportation plans and population density and distribution in promoting harmonious interrelationships and optimum internal accessibility;

(3) Preservation and enhancement of natural features such as water bodies and steep slopes; establishment and maintenance of an accessible open-space network for conservation, natural beauty, and recreation; and effectiveness of measures to prevent environmental pollution and problems such as flooding and soil instability;

(4) Adequacy of public facilities to serve community needs, including water and sewer, schools, recreation, health facilities, streets, walkways, highways, and other transportation facilities;

(5) Adequacy of controls and incentives for promoting attractive land utilization, urban design and architecture;

(6) Phasing of all features of the plan on a schedule compatible with economic feasibility and geared to the timing of land acquisition, development, and disposition as reflected in the financial plan;

(7) The extent to which the plan contains innovative features;

(8) Adequacy of provision for relocation of existing residents and businesses to the extent required by the land use plan; and

(9) Adaptability of the plan to the various problems and alternatives which may arise as development proceeds.

(c) *Housing mix.* A new community must contain an adequate range of housing and a variety of housing types for both sale and rental for people of all incomes, ages, and family composition, including a substantial amount for people of low and moderate income. The following factors, among others, will be considered in determining the sufficiency of housing mix:

(1) Existing and projected distribution of families by income and size for the region in which the project is located;

(2) Existing and projected housing supply and demand, particularly for low- and moderate-income housing, in the region and market area of the project; and

(3) Income and family characteristics of persons likely to be employed in the new community.

Existing housing in standard condition or proposed to be rehabilitated within the new community, as well as new construction, may be considered in determining adequacy of housing balance. But whether this housing is to be newly constructed or rehabilitated, the new community plan must include reasonable assurances that the units planned will actually be provided. If the development of a new community is to be carried out in stages, sites for low and moderate income housing shall be included in every major residential stage.

(d) *Community services and government.* (1) A new community must be provided with a full range of government and public services adequate to meet the needs of all its residents. Such services may be provided by State or local government, by community organizations, or by other appropriate entities. If public facilities or utilities are to be operated by a nonpublic body, rates and charges, capital structure, rate of return, and methods of operation of the facility or utility must be regulated by a public body or by other means satisfactory to the Secretary.

(2) A new community need not be or constitute a separate political unit but may be governed through a county, city, town, or other existing political jurisdiction. Where it is contemplated that a developer or a developer-controlled organization or association will, during the course of development, perform functions normally performed by a general unit of government, provision should be made in the new community plan or plans for an orderly transfer of such functions to an appropriate governmental unit at an appropriate time.

(e) *Area planning and development.* The area within which a new community is to be situated must be covered by a comprehensive areawide plan or by ongoing planning promulgated or carried on by a duly authorized agency. The location of the new community and the internal development plan for the project must be consistent with such comprehensive plan or planning and must reflect consideration of any economic development programs, functional plans, and public works programs of relevant Federal, State, regional, city, or county agencies for the area in which the new community is located. The comprehensive plan or planning for the area must, in the Secretary's judgment, be sufficiently detailed to provide a reasonable basis for evaluating the relationship of the proposed new community to area population trends, major transportation facilities and development patterns, areawide land use, systems for water and sewage, open space, and recreation. In those areas where there is an areawide planning agency certified by the Secretary, consistency must be found between the planning performed by the certified agency and the new community.

(f) *Social elements.* In order to assure that projects reflect social considerations and human needs, new community plans must reflect or incorporate the following:

(1) Use of citizen advisory groups, opinion surveys, or other methods of developing a design and structure for the new community that will be responsive to the needs of residents, both at the beginning and, through continuing evaluation, at later stages of development;

(2) Location and distribution of housing types and price ranges so as to prevent segregation and afford full access to facilities, and participation in activities, of the community and neighborhood by groups, families, and individuals of different economic, social, and racial backgrounds;

(3) A program of citizen participation in project activities, including use of home associations and civic organizations appropriately formulated to supplement, as necessary, opportunities offered by governmental or public institutions, and to provide for full opportunity for participation by renters and low-income residents; and

(4) Specific actions that may be needed to promote high quality schools or to encourage or assure, as appropriate, establishment of community colleges, technical or vocational education centers, adult education courses, and job retaining facilities.

(g) *Disclosure of certain interests.* Developers and contractors must disclose, in accordance with such procedures or forms as the Secretary may prescribe, all direct and indirect interests that may affect the arm's length character of any transactions relied upon to establish estimated or actual costs, or value, for purposes of determining the amount of obligations to be guaranteed or the amount of the proceeds of such obligations that can be disbursed. Where such interests exist, the Secretary may fix such special allowances or fees, or require special accounting for costs, or take such other actions as he may determine are reasonable and appropriate in order to prevent the guarantee of obligations, or the disbursement of funds, in excessive amounts.

§ 710.7 Other requirements for new community development.

(a) *Capability of developer.* (1) Only private developers are eligible for guarantees under the Act. These include profit-seeking, nonprofit, or limited dividend corporations. The form of organization of the developer and changes in that form must be approved by the Secretary. Changes in ownership which might result in changes in control of the developer's operation must also be approved.

(2) The developer must have financial, technical, and administrative ability and background appropriate to the size and complexity of the project, the amount of the obligations to be guaranteed, and the period of time for project completion. The developer must have either in his own organization or available to him land development and related skills of a high order over the whole period of development. He must also have the capacity for anticipating and dealing effectively with the social concerns and problems that must be considered in planning the community or that may arise during the period of development.

(3) The developer may engage in nontitle IV activities, either in the project itself or in related development, subject to such conditions as the Secretary may impose. The project agreement shall impose such controls and limitations as the Secretary shall determine are required to (i) govern the nontitle IV activities of the developer, in the project itself or otherwise, or (ii) provide separation of accounts and activities to serve the purposes of the Act and protect the security interests of the United States.

(b) *Equal opportunity.* (1) The new community project must be specifically designed and implemented so as to assure compliance with all requirements imposed by, or pursuant to, any applicable statute or executive order treating with discrimination on the basis of race, creed, color, sex, or national origin. These include title VIII (Fair Housing) of the

Civil Rights Act of 1968 (42 U.S.C. 3601–3619); title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e); the Civil Rights Act of 1866, as amended (42 U.S.C. 1981 and 1982); Executive Order 11063 (27 F.R. 11527); and Executive Order 11246, as amended by Executive Order 11375 (30 F.R. 12319, as amended by 32 F.R. 14303); which apply variously so as to prohibit discrimination in the use, sale, lease, or other disposition of land, housing, or facilities in the new community and in employment in the new community or in the development of the new community project. Pursuant to the authority in each executive department to issue regulations and take other appropriate action under Executive Order 11063 with respect to its programs, discrimination on the basis of race, color, creed, or national origin in the use, sale, lease, or other disposition of any land developed for residential or related uses with assistance under the Act is hereby specifically made a violation of that order enforceable under the terms of section 302 of the Order after due notice and hearing.

(2) In furtherance of subparagraph (1) of this paragraph and as a condition of granting or continuation of assistance, the developer must formulate and implement an affirmative action program covering all or part of the new community project; include appropriate equal opportunity provisions in pertinent contracts, subcontracts, covenants, or other documents; and take such further steps as the Secretary may direct to carry out the developer's program, including, but not limited to, provision of equal opportunity in employment and encouragement of minority business enterprise.

(c) *Labor standards.* In any new community project, construction contracts, subcontracts, or building and loan agreements for land development assisted under the Act shall contain such labor standards clauses as the Secretary may direct in furtherance of the Act and of the regulations of the Secretary of Labor codified in 29 CFR Part 5. The provisions of such regulations with respect to ineligible contractors shall also be observed. No proceeds of new community obligations may be disbursed to a developer with respect to any such construction contract unless there has been filed, in a manner satisfactory to the Secretary, a certificate signed by the contractor or subcontractor stating that laborers and mechanics employed under the contract have been paid not less than the wages determined by the Secretary of Labor to be prevailing wages for corresponding classes of laborers and mechanics employed on construction of a similar character.

(d) *Small builders.* In any new community project, there must be provision satisfactory to the Secretary to encourage maintenance and growth of a diversified local homebuilding industry and broad participation by builders, particularly small builders.

(e) *Governmental approvals.* The developer must secure all State and local approvals required by law or determined by the Secretary to be necessary for the project. To the extent significant project activities will require, or depend upon, future approvals that are necessarily unobtainable at the time the offer of commitment is made or the project agreement entered into, the Secretary will require that the project plan or plans provide reasonable assurance that such approvals will and can be secured, in a timely fashion, as needed.

(f) *Staging.* Major new community projects will ordinarily be planned, carried out, and financed in progressive stages, so as to provide an opportunity to test the market and minimize financial risk, with each stage resulting in a balanced and self-sufficient whole. Exceptions to this requirement, and the degree of and terms for staging, will be determined according to the scope of the project, the nature of market demand, the extent of assurance that all contemplated financing will be obtained and all public actions or approvals taken or obtained, the degree to which economies of scale can in fact be obtained, the possible adverse effects of contemplated major improvements upon the Government's security, the projected scheduling of housing in relation to critical housing needs, particularly needs for low and moderate income housing, and such other matters as the Secretary deems relevant. Regardless of the stage covered in the initial application, the developer must submit a general plan for the entire project which will be covered by subsequent stages.

Subpart C—Financial and Economic Criteria and Standards

§ 710.8 Economic feasibility.

A new community must be economically feasible in terms of economic base or potential for growth. Among the criteria by which feasibility will be determined are the following:

(a) Current and projected economic and demographic growth patterns and demand for and supply of industrial, commercial, and residential properties for the region in which the project is located;

(b) The market area of the project and the growth and demand trends projected within this market area;

(c) The advantages of the project, relative to other developments, including its location, the managerial and marketing skills associated with it, and its capacity to sustain a job base which, in turn, will generate demand for housing and commercial facilities.

In the case of projects in rural and other areas, including those beyond the urbanizing portion of a metropolitan area, where, for economic or other reasons, advantage cannot be taken of existing growth trends, it is particularly important that there will be a large enough employment base to generate demand to sustain the projected growth rate of the new community. Feasibility will depend upon the basic conditions for industrial development; the probable effectiveness of private and governmental efforts to attract stable industries and to overcome some of the major obstacles to economic development; and the degree to which commitments from industries can be secured.

§ 710.9 General financial plan and program.

A new community must be developed pursuant to a financial plan or program which must include provisions that will:

(a) Cover all anticipated project costs, including, but not limited to, costs which will be met with funds to be borrowed under the obligations guaranteed;

(b) Demonstrate the manner by which, and the sources from which, these costs will be met, including anticipated revenues from the project, financial resources of the developer, and borrowing;

(c) Provide assurances that the developer will have an adequate incentive, in terms of equity invested and expected return, for proceeding with the approved project in an expeditious and efficient manner; and

(d) Set forth a procedure for periodic updating of the financial plan to take into consideration changes in costs, revenues, market conditions, and other relevant changes affecting the plan.

§ 710.10 Maximum Federal guarantee.

The maximum loan which may be guaranteed under the Act is the lesser of (a) 80 percent of the Secretary's estimate of the value of the property upon completion of land development or (b) the sum of 75 percent of the Secretary's estimate of the value of the land before development and 90 percent of his estimate of the actual cost of land development. In no event shall the principal amount of the outstanding obligations guaranteed under the Act with respect to a single project exceed $50 million. Land which is yet to be acquired and costs which are yet to be incurred at the time a commitment is made may be included as a basis for determining maximum commitment, but, in the absence of escrow or trust provisions under § 710.22(b)(1), only land acquired and costs incurred at or prior to issuance of a guarantee may be included as a basis for determining the maximum outstanding principal amount of obligations which may be guaranteed.

§ 710.11 Land valuation.

Among the principles which the Secretary will apply with respect to any valuation and which should be applied in any valuation made by or on behalf of a developer are the following:

(a) *Before development.* (1) Estimates of the "as is" value of the land prior to its development as part of a new community project must be based, to the greatest extent possible, on recent actual arm's length sales transactions of the land involved or of nearby comparable land. In all cases where land valuations exceed actual prices paid by the developer or paid in the latest arm's length transactions, the reasons for the valuation will be fully explained and documented. Unusually high prices paid for remaining parcels needed to round

out a site will be considered as unrepresentative of the values of the site as a whole. Different parcels may be valued according to their highest and best use only where supported by market demand. In any case, valuation shall not be limited to a small sample acreage or a few selected choice parcels.

(2) Valuation should not take into account any increased values resulting from the guarantees expected to be issued under the Act and the development made possible by these guarantees, as distinct from normal growth that would have been expected in any event. It is recognized, however, that market value may be increased by improvements already on the land, including those installed by the developer, and changes which have occurred in local zoning or comprehensive planning as a result of actions by the developer. Such increases in value may be taken into account to the same extent as they would be in valuing comparable land.

(b) *After development.* Estimates of the value of the property upon completion of land development should reflect the income potential of the new community project from the sale or rental of developed land if the project is carried out as planned. Consideration should be given to the potential effect on values of existing and planned public facilities and other existing and planned development in the area. Absorption rates should be related to the proposed land uses and development schedule for the project. Weight should also be given to any factors affecting the potential value of the particular land in question, such as zoning which may be approved, access, topography, and anticipated governmental approvals.

§ 710.12 Cost estimation.

Only the actual costs of land development, as those terms are defined in § 710.2 (e) and (f), will be considered for purposes of calculating the maximum amount of obligations which may be guaranteed under the Act. The general principles that will apply in estimating actual costs of land development for this determination are as follows:

(a) Costs of land development may be included as estimated actual costs to the extent that they are expected to be incurred after the date as of which land valuation is determined by the Secretary. Planning and other organizational costs relating directly to the development of the new community proposal may be included even if incurred prior to that date.

(b) Construction costs estimates, to the fullest extent feasible, should be supported by detailed engineer's cost figures broken down by unit quantities and prices, and must be identified in terms of specific improvements.

(c) Fees and charges payable pursuant to Subpart E of this part before or during development may be included as estimated actual costs.

§ 710.13 Terms and conditions of borrowing.

(a) *Kind of obligations.* The obligations guaranteed under the Act may include any bond, debenture, note, or other obligation issued by a developer for public or private sale. To facilitate public financing, the guaranteed obligations of any number of developers may be issued to a trustee who will sell to the public, through underwriters or otherwise, certificates of participation or other securities evidencing rights in the guaranteed obligations held in trust, provided that the terms and conditions of each such transactions shall be approved by the Secretary.

(b) *Investors and lenders.* Investors in guaranteed obligations, except for public offerings, must be approved by the Secretary or must meet such standards and criteria as may be from time to time prescribed by him. In the case of a public offering, obligations must be underwritten under terms and conditions approved by the Secretary.

(c) *Rates of interest and maturities.* Rates of interest and any other charges relating to guaranteed obligations and the repayment maturity and redemption privilege provisions of such obligations must be approved by the Secretary.

(d) *Trustees and fiduciaries.* Any trustee or other person or corporation acting in a fiduciary capacity with respect to a guaranteed obligation must be a banking or other financial institution subject to governmental inspection and supervision. Approval of such a trustee or other person may be conditioned on its written agreement with the Secretary to take such steps and act under such conditions as the Secretary may prescribe for the protection of the security interests of the United States.

§ 710.14 Equity and working capital.

(a) Prior to the execution of the project agreement a developer must make arrangements satisfactory to the Secretary to assure that there will be adequate funds and working capital to meet cash requirements for costs and contingencies, not covered by the proceeds of guaranteed obligations, incurred or to be incurred in connection with the land development program.

(b) The Secretary may require developers to have equity in addition to funds described in paragraph (a) of this section, according to the amount of and arrangements for debt financing, and such other considerations as he determines may bear upon the risks to the United States as guarantor.

§ 710.15 Security for the guarantee.

(a) All obligations must contain, or be issued subject to, such provisions relating to the security interests of the United States as may be required by the Secretary. These shall include general provisions under which the United States shall acquire rights of subrogation on payment of a guarantee in addition to such special provisions relating to the security of the United States in the specific property, including real property being acquired and developed, or other property as may be appropriate.

(b) Unless otherwise required or approved by the Secretary, the security of the United States will include a first lien on the real property of the developer (or such portion thereof as the Secretary may determine) owned or acquired in connection with the project. The developer's title to such property and the validity of such lien must be evidenced by a title insurance policy issued by a title insurer licensed to do business in the State in which the real property is located and acceptable to the Secretary, or other satisfactory evidence of title. The form and amount of any title insurance policy shall comply with the standards prescribed by the Secretary. At, or prior to, the issuance of obligations guaranteed under the Act, the first lien referred to above shall be given to and held by the Secretary, or by a trustee approved by him. The instruments creating such lien and setting forth the terms and conditions under which it is given and held must be satisfactory to the Secretary.

(c) Such instruments shall include provisions for the release of real property from the lien, as such property is sold or otherwise disposed of for project purposes, in accordance with such schedules and procedures as the Secretary may require in the project agreement to assure that on the sale or other disposition of such property (i) adequate release payments will be applied to the redemption of the guaranteed obligations or paid into an appropriate fund, or (ii) other appropriate action will be taken or assurances received as may be required to protect the security interests of the United States.

§ 710.16 Terms and conditions of payment under the guarantee.

(a) *Nature and scope.* The full faith and credit of the United States is pledged to the payment of any guarantee made pursuant to the Act, and the validity of such guarantee shall be incontestable in the hands of a qualified holder of a guaranteed obligation, except for fraud or material misrepresentation on the part of such holder. The guarantee may extend to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(b) *Claims and payment upon default.* Upon default by a developer in payment of interest or principal under an obligation guaranteed under the Act, the first recourse of the holder thereof shall be a claim under the guarantee for payment of the defaulted interest or principal; and, upon payment thereof in accordance with the terms of such guarantee, the holder shall have no further recourse. All payments thereunder shall be made in cash from the revolving fund established pursuant to the Act.

Subpart D—Procedures

§ 710.18 Preapplication proposal.

The preapplication procedure is designed to provide an initial screening to determine whether or not a project appears to be within the broad framework of the Act before all of the detailed

plans are completed by the developer. It will also provide the Secretary an opportunity to work with the developer from the earliest stages of project planning.

(a) *Inquiry.* After familiarizing themselves with the Act and the regulations in this part, applicants are encouraged to meet with the Assistant Secretary for Community Planning and Management and his designated representatives to discuss their proposals, so that subsequent steps may be taken with a clear understanding of the goals and requirements of the program.

(b) *Proposal.* The first formal step in processing is submission of a preapplication proposal to the Assistant Secretary for Community Planning and Management, U.S. Department of Housing and Urban Development, Washington, D.C. 20410. The proposal should deal in summary form with the criteria for project evaluation set forth in Subparts B and C of this part. The proposal need not include the detailed supporting data required for an application. Specific instructions regarding the items which must be included in a proposal may be obtained from the Assistant Secretary for Community Planning and Management. No charge is required upon submission of a preapplication proposal.

(c) *Review and action.* The Assistant Secretary for Community Planning and Management, upon completion of his review of each proposal, will inform the applicant in writing of his findings and (1) invite submission of an application; (2) invite submission of an application, indicating the need for specific changes in the project; (3) recommend the resolution of certain critical problems before proceeding with an application; or (4) discourage an application, indicating the aspects of the proposal which do not appear to meet the requirements of the Act. An invitation to submit an application does not constitute or imply an assurance of eventual approval by the Department. If the applicant is not invited to submit an application, but nevertheless believes that the project may qualify under the Act, he may resubmit the proposal for further review with such changes as, in his opinion, will overcome the initial objections of the Assistant Secretary for Community Planning and Management.

§ 710.19 Application.

(a) *Submission.* An application may be submitted to the Assistant Secretary for Community Planning and Management following receipt of an invitation pursuant to § 710.18, and upon payment of the application charge specified in § 710.24. The application must contain information adequate to enable the Secretary to make the determinations that the criteria covered in Subparts B and C of this part have each been met. Specific instructions regarding the items which must be included in an application may be obtained from the Assistant Secretary for Community Planning and Management. Such items may, in addition to other matters, include information as to a range of feasible interest rates and alternative repayment schedules and maturities, subject to further determinations in accordance with paragraph (b) of this section.

(b) *Offer of commitment.* If the determinations referred to in paragraph (a) of this section are made by the Secretary and an application is approved by him hereunder, the Secretary may address a letter to the applicant stating in effect that, based upon the information contained in the applicant's proposal and application and any other information which may have been submitted by the applicant, the Secretary is prepared to enter into an agreement providing for the guarantee under the Act of a specified maximum principal amount of obligations to be issued by a specified developer, subject to approval by the Secretary of—

(1) The initial investors (in the case of a private sale of such obligations) or the terms and conditions of the underwriting (in the case of a public sale of such obligations);

(2) The rate of interest to be borne by such obligations or the formula by which such rate will be determined;

(3) The repayment and maturity provisions of such obligations;

(4) The specific measures for the protection of the security interests of the United States, liens and releases of liens, and payment of taxes; and

(5) All other terms and conditions of the financing arrangements which might affect the interest of the United States; and subject to such further conditions as the Secretary may prescribe.

(c) *Acceptance of offer of commitment.* The offer to commit contained in any such letter shall expire 90 days after the issuance thereof unless accepted by the applicant prior to such expiration by payment of the commitment charge specified in § 710.25. Within 90 days after the expiration of such offer to commit, it may be reopened and accepted by the applicant by request in writing to the Secretary accompanied by tender of the commitment charge and the reopening charge, if the Secretary in his discretion approves such request. An accepted offer to commit shall remain effective as a commitment to enter into a project agreement pursuant to § 710.20 for 6 months, at which time the commitment shall expire unless the applicant has taken all steps that the Secretary determines to be required under this part as a prerequisite to the execution of such project agreement or unless such 6-month period is extended at the discretion of the Secretary.

§ 710.20 Project agreement.

Following satisfaction of all conditions stated in any commitment of the Secretary, and before the making of any guarantees, the developer will be required to enter a project agreement which shall be in a form satisfactory to the Secretary. The agreement shall set forth the understandings of the Secretary and the developer with respect to the entire project, including the understandings, if any, as to how the project is to be carried out in stages. The agreement shall also set forth the developer's agreement to carry out the project in accordance with specified plans, as approved by the Secretary, and the Secretary's agreement to guarantee obligations of the developer issued pursuant to those plans, subject to the limitations set forth in the Act and this part. The agreement shall further include—

(a) An express covenant to the effect that the Government's interests in the project are not limited to its financial interests as guarantor but extend to accomplishment of the public purposes of the Act;

(b) Provisions setting forth the duties and responsibilities of the developer with respect to parts or portions of the project which will not be carried out by the developer;

(c) Provisions governing the security to be provided to the United States;

(d) Provisions setting forth the rights and remedies of the United States in the event of default, including rights to seek injunctive or other equitable relief;

(e) Special provisions as necessary to assure compliance with equal opportunity, labor standards, and other particular requirements;

(f) Duties of the developer to provide information, data, and reports as required by the Secretary; to maintain adequate books and records; and to permit and provide as necessary for inspections and on-site examinations by or on behalf of the Secretary; and

(g) Such other provisions as the Secretary may require as necessary or appropriate to assure adherence to the project as approved, or the provisions of the Act or of this part, or to protect the Government against loss.

§ 710.21 Issuance of guaranteed obligations.

At the request of the developer pursuant to the project agreement and upon satisfaction of the conditions specified in such agreement, the Secretary will endorse his guarantee upon obligations duly issued by the developer pursuant to a purchase or underwriting agreement approved by the Secretary. The guarantee fee specified in § 710.27 must be paid at the time the guarantee is made.

§ 710.22 Project execution and monitoring.

(a) *Inspections and reports.* To insure that the project is being executed in a manner consistent with the objectives of the Act and as provided in the project agreement, the developer will be required to submit periodic financial and other reports on project execution. The Secretary will also be afforded access to the project site at all reasonable times for purposes of inspection.

(b) *Use of proceeds of guaranteed obligations*—(1) *Land valuation and cost certification.* Disbursement to the developer of proceeds from the sale of obligations guaranteed under the Act must be supported by prior submission to the Secretary of an independent valuation of

land acquired or to be acquired by the developer or certification of actual costs of land acquisition or land development, or a combination of such valuation and certification. Any such valuation must be prepared in accordance with the principles set forth in § 710.11 to the satisfaction of the Secretary. Any such certification must be in the form satisfactory to the Secretary and must be accompanied by such documentation as he may deem necessary to assure that such costs (i) have in fact been incurred by the developer for the project and (ii) are eligible for financing under the Act. If it is expected that guaranteed obligations will be issued and sold in anticipation of land acquisition or of costs for land development incurred in the future, appropriate provisions must be made for escrow or trusteeship of the proceeds of sale to the extent and so long as disbursement of such proceeds is unsupported by valuation of land actually acquired or certification of actual costs incurred.

(2) *Loan disbursements.* Funds to be derived from obligations which the Secretary has guaranteed or agreed to guarantee shall be disbursed or made available to the developer in accordance with limitations as to disbursements approved by the Secretary. Such limitations shall be based upon project needs, the progress of work completed as against work planned, the maintenance by the developer of required equity and working capital, the possibility of overruns or unanticipated costs, the extent to which allowable land values exceed land costs, and such other matters as the Secretary may deem relevant. Amounts properly allowable and credited, but withheld pursuant to such limitations and not otherwise paid to the developer for approved purposes, will be made available upon conclusion of the project, or the stage of a project to which such amounts relate, or are apportioned, as the Secretary may determine.

(c) *Records.* The developer must maintain, to the satisfaction of the Secretary, records of all costs incurred for the project and must require his contractors and subcontractors to maintain similar records. Upon request, all such records and all agreements relevant thereto shall be made available at all reasonable times for examination by the Secretary. Insofar as such records and agreements relate to any grants or guarantees made pursuant to this part, the financial transactions of recipients of Federal grants or of developers whose obligations are guaranteed by the United States, pursuant to this title, may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, files, and all other papers, things, or property belonging to or in use by such developers or recipients of grants pertaining to such financial transactions and necessary to facilitate the audit.

(d) *Amendments.* As a result of changes in market demand, employment patterns, costs and revenues or other factors or conditions, it may become desirable to make certain amendments to the plans initially approved by the Secretary. All proposals for amendments by the developer must be submitted to the Secretary for approval, together with full justification therefor. Such approval will be based upon the same criteria, and will take account of the same purposes, as are set forth in this part for consideration of the initial application. The Secretary may recommend, or require, subject to conditions set forth in the project agreement, amendments to an approved plan when, in his opinion, such amendments are necessary or desirable to insure the financial stability of the project or to prevent situations which would impair the value of the project or its ability to carry out the purposes of the Act.

Subpart F—Fee and Charge Schedule

§ 710.24 Application charge.

An application charge of $5,000, nonrefundable, shall accompany the application.

§ 710.25 Commitment charge.

A commitment charge equal to 0.5 percent of the principal amount of the commitment up to $30 million, and, in addition, 0.1 percent of the principal amount above $30 million, shall be paid upon acceptance of an offer of commitment or at the time a guarantee is made, whichever occurs first.

§ 710.26 Reopening charges.

A reopening request pursuant to § 710.19(c) shall be accompanied by a charge of 0.05 percent of the expired offer of commitment. An offer of commitment which has expired because of the failure to pay the commitment charge may be reopened and accepted only upon payment of the commitment charge and the reopening charge.

§ 710.27 Guarantee fee.

A guarantee fee equal to 3 percent of the principal amount of obligations guaranteed by the Government shall be paid at the time of the issuance of such obligations.

§ 710.28 Annual fee.

An annual fee equal to 0.5 percent of the average principal amount of guaranteed obligations outstanding during the preceding year shall be paid on the first anniversary date of the initial guarantee and on each following anniversary date of the guarantee, until the seventh such date; and, thereafter, an annual fee of 1 percent of the average principal amount of guaranteed obligations outstanding during the preceding year shall be paid on each subsequent anniversary date of the initial guarantee until the total obligation is paid in full.

§ 710.29 Transfer charge.

Upon application for approval of a case involving the substitution of developers, a transfer charge of 0.05 percent of the unused portion of the commitment shall be paid.

Chapter VIII—Office of Assistant Secretary for Research and Technology [Reserved]

Chapter IX—Office of Interstate Land Sales Registration

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1700 Introduction.
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PART 1700—INTRODUCTION

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1700.80 Director of the Examination Division, Office of Interstate Land Sales Registration and Deputy.
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1700.90 Acting Administrator.

AUTHORITY: The provisions of this Part 1700 issued under sec. 1419, 82 Stat. 593; 15 U.S.C. 1718.

Subpart A—Authority and Organization

§ 1700.1 Scope of authority and purpose.

A land developer is required by the Interstate Land Sales Full Disclosure Act, Title XIV of Public Law 90-448, 82 Stat. 590, 15 U.S.C. 1701, enacted on August 1, 1968 (hereafter in this part referred to as the Act) to make full disclosure in the sale or lease of certain undeveloped, subdivided land. The Act makes it unlawful (except with respect to certain exempted transactions) for any developer to sell or lease, by use of the mail or by any means in interstate commerce, any such land offered as part of a common promotional plan unless the land is registered with the Secretary of Housing and Urban Development and a printed property report is furnished to the purchaser or lessee in advance of the signing of an agreement for sale or lease.

§ 1700.5 Authority of Secretary.

Section 1416(a) of the Act vests authority and responsibility for its administration in the Secretary of Housing and Urban Development (hereafter in this part referred to as the Secretary), and authorizes the Secretary to delegate any of his functions, duties and powers thereunder to employees of the Department of Housing and Urban Development.

§ 1700.10 Delegation of authority.

(a) The Secretary has delegated to the Assistant Secretary for Housing Produc-

tion and Mortgage Credit and Federal Housing Commissioner (hereafter in this part referred to as the Assistant Secretary) all of the authority to exercise the power and authority vested in him under the Act with the exception of the following matters which the Secretary has retained and not redelegated:

(1) The authority to conduct hearings in accordance with 5 U.S.C. 556.

(2) The authority to issue orders or determinations after such hearings.

(3) The authority to sue and be sued.

(b) The Secretary has further authorized the Assistant Secretary to redelegate any of the delegated authority to employees of the Department.

§ 1700.15 Establishment of office.

The Assistant Secretary has established, as an organizational unit of the Department of Housing and Urban Development, the Office of Interstate Land Sales Registration to administer the Act.

§ 1700.20 Administrator.

The Office of Interstate Land Sales Registration is headed by an Administrator designated by the Assistant Secretary.

§ 1700.25 Principal divisions.

The following Divisions have been established within the Office of Interstate Land Sales Registration:

(a) Examination Division.

(b) Administrative Proceedings Division.

§ 1700.30 Public information.

(a) *In general.* The identifiable records of the Office of Interstate Land Sales Registration are subject to the provisions of 5 U.S.C. 552, as implemented by Part 15—Public Information, Subtitle A, of this title.

(b) *Availability of information and records.* Information concerning land sales registrations and copies of statements of record may be obtained from the following address:

Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20411.

In addition, statements of record may be reviewed at such address on any business day from 8:45 a.m. to 5:15 p.m.

(c) *Nonapplicability of exemptions authorized by 5 U.S.C. 552.* Section 1405(d) of the Act specifically provides that information contained in or filed with any statement of record shall be made available to the public. The exemptions from public disclosure authorized by 5 U.S.C. 552, as set forth in § 15.21 of this title, are not applicable to information contained in or filed with a statement of record.

(d) *Duplication fee—property report.* Notwithstanding the provisions of § 15.14 *Schedule of Fees* of this title, copies of a Property Report on file with the Office of Interstate Land Sales Registration will be provided upon request for a fixed fee of $2.50 per copy regardless of the number of pages duplicated.

Subpart B—Delegations of Basic Authority and Functions

§ 1700.75 Administrator of the Office of Interstate Land Sales Registration and Deputy.

To the position of Administrator of the Office of Interstate Land Sales Registration and under his supervision to the position of Deputy Administrator, there are delegated and assigned the following authorities and responsibilities.

(a) To exercise all powers vested in the Secretary of Housing and Urban Development by the Interstate Land Sales Full Disclosure Act and delegated to the Assistant Secretary for Housing Production and Mortgage Credit and Federal Housing Commissioner, except the power of the Assistant Secretary to issue regulations under the act.

(b) To direct the operations of the Examination Division and the Administrative Proceedings Division.

(c) To accept and utilize on a reimbursable basis administrative, fiscal, technical, and other services of the Federal Housing Administration and of the Office of General Counsel, HUD, and the Inspection Division, HUD, as may be necessary to carry out the purposes of the Interstate Land Sales Full Disclosure Act.

§ 1700.80 Director of the Examination Division, Office of Interstate Land Sales Registration and Deputy.

To the position of Director of the Examination Division, Office of Interstate Land Sales Registration, and under his supervision to the position of Deputy Director there are delegated and assigned the following authorities and responsibilities:

(a) To receive and examine all statements of record and property reports filed under the provisions of the Interstate Land Sales Full Disclosure Act and all amendments and corrections to such statements.

(b) To determine the adequacy of disclosure of statements of record and property reports and amendments thereto and to effect corrections, additions, and deletions in such statements and reports deemed necessary to achieve the purposes of the Interstate Land Sales Full Disclosure Act.

(c) To find effective or to recommend to the Administrator that he declare not effective statements of record filed under the Interstate Land Sales Full Disclosure Act and to prepare and present evidence in connection with hearings and other administrative proceedings relative to statements of record declared not effective.

§ 1700.85 Director of the Administrative Proceedings Division, Office of Interstate Land Sales Registration and Deputy.

To the position of Director of the Administrative Proceedings Division, Office of Interstate Land Sales Registration, and under his supervision to the position of Deputy Director, there are delegated and assigned the following authorities and responsibilities:

(a) To receive, examine, and make determinations with respect to complaints arising from the alleged failure of a developer subject to the Interstate Land Sales Full Disclosure Act to comply with the requirements of such Act and regulations issued thereunder and to negotiate resolution of such complaints and compliance by such developers.

(b) To recommend action by the Administrator to achieve compliance by developers deemed subject to the Act who have not complied with any or all of the requirements of the Act and regulations issued thereunder.

(c) To conduct, on his own initiative or in response to information received, reviews to determine the existence of such noncompliance and secure compliance with the requirements of the Interstate Land Sales Full Disclosure Act and regulations thereunder.

(d) To recommend suspension by the Administrator of statements of record on a determination of noncompliance with the requirements of the Interstate Land Sales Full Disclosure Act and regulations thereunder.

(e) To recommend action to secure permanent or temporary injunctions or restraining orders to prevent acts or practices in violation of the provisions of the Interstate Land Sales Full Disclosure Act and regulations thereunder and to require compliance therewith.

(f) To prepare and present evidence in connection with hearings or other administrative proceedings or injunctions or restraining orders in connection with suspensions of statements of record or other action in connection with noncompliance under the Interstate Land Sales Full Disclosure Act and regulations thereunder.

§ 1700.90 Acting Administrator.

The Deputy Administrator, the Director of the Examination Division, and the Director of the Administrative Proceedings Division, in the order named, are designated by the Administrator to act in his place and stead in the event of his absence or inability to act, having the title of "Acting Administrator" with the powers, duties and rights delegated to the Administrator in § 1700.75.

PART 1710—LAND REGISTRATION

Subpart A—General Requirements

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AUTHORITY: The provisions of this Part 1710 issued under sec. 1419, 82 Stat. 598; 15 U.S.C. 1718.

Subpart A—General Requirements

§ 1710.1 Definitions.

As used in this chapter, the following terms shall have the meaning indicated:

(a) "Act" means the Interstate Land Sales Full Disclosure Act, Title XIV of Public Law 90-448, 82 Stat. 590, enacted on August 1, 1968.

(b) "Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

(c) "Developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision.

(d) "Interstate commerce" means trade or commerce among the several states.

(e) "Offer" means any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision.

(f) "Person" means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate.

(g) "Purchaser" means an actual or prospective purchaser or lessee of a lot in a subdivision.

(h) "Rules and regulations" refer to all rules and regulations adopted pursuant to the Act, including the general requirements and the report requirements published in this part.

(i) "Secretary" means the Secretary of Housing and Urban Development or his duly authorized representatives.

(j) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(k) "Subdivision" means any land which is divided or proposed to be divided into 50 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan and where subdivided land is offered for sale or lease by a single developer or a group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering as being offered for sale or lease as part of a common promotional plan.

(l) "Unimproved land" means a lot or lots which are located in a subdivision and upon which there are no residential, commercial or industrial buildings.

§ 1710.5 General applicability.

Except in the case of an exempt transaction as provided in § 1710.10, a developer may not sell or lease unimproved land in a subdivision, making use of any means or instruments of transportation or communication in interstate commerce or of the mails, unless a statement of record is in effect in accordance with the provisions of this part; and the developer furnishes each purchaser with a printed property report, meeting the requirements of the provisions of this part, in advance of the signing of any contract or agreement for sale or lease by the purchaser. As used in this part, "unimproved land" shall include lots located in a foreign country if the offer to sell or lease the lots is made from within a State, making use of any means or instruments of transportation or communication in interstate commerce or of the mails.

§ 1710.10 Exemption.

Unless a method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act, the rules and regulations in this part shall not apply to the following transactions.

(a) The sale or lease of real estate not pursuant to a common promotional plan to offer to sell 50 or more lots in a subdivision.

(b) The sale or lease of lots in a subdivision all of which are 5 acres or more in size.

(c) The sale or lease of any lots on which there is a residential, commercial, or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of 2 years.

(d) The sale or lease of real estate under or pursuant to court order.

(e) The sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate.

(f) The sale of securities issued by a real estate investment trust.

(g) The sale or lease of real estate by any government or government agency.

(h) The sale or lease of cemetery lots.

(i) The sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business.

(j) The sale or lease of real estate which, at the time of sale or lease, is free and clear of all liens, encumbrances and adverse claims. For the purpose of exemption under this paragraph the definitions of terms in subparagraphs (1) and (2) of this paragraph shall be applicable and the conditions of subparagraphs (3), (4), (5), and (6) of this paragraph shall be met.

(1) The meaning of "liens, encumbrances and adverse claims" shall not include:

(i) Property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed.

(ii) Taxes and assessments imposed by a State, by any other public body having authority to assess and tax property or by a property owners' association, which under applicable State or local law constitute liens before they are due and payable.

(iii) Beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision.

(2) The time of sale or lease shall be deemed to be the date the sales contract or lease is signed by the purchaser except that the time of sale shall be deemed to be the effective date of the conveyance if both of the following conditions are met:

(i) The contract of sale requires delivery of a deed to the purchaser within 120 days following the signing of the sales contract.

(ii) Any earnest money deposit or other payment on account of the purchase price, made by the purchaser prior to the effective date of the conveyance, is placed in an escrow account, fully protecting the interests of the purchaser, in an institution or organization which has trust powers or in an established bank, title insurance or abstract company, or escrow company doing business in the jurisdiction in which the property is located.

(3) Each and every purchaser or his or her spouse has personally made an on-the-lot inspection of the real estate which he has purchased or leased prior to the signing of a contract to purchase or lease.

(4) The developer has filed with the Secretary a claim of exemption in the form of an affirmation set forth in § 1710.101.

(5) The developer has obtained the Secretary's approval of a statement, prepared in accordance with the instructions in § 1710.102, which shall be furnished to each purchaser prior to the time of sale or lease, and the receipt thereof acknowledged in writing prior to the time of sale or lease by the purchaser.

(6) The developer shall file a copy of each acknowledged statement, with the Secretary within 31 days after the expiration of the calendar year in which the sale or lease is made. Such copies shall be bound in alphabetical order and indexed by purchaser surname. Each bound volume shall contain only such copies as are applicable to a single subdivision and shall be identified on the outer cover by the name and location of the subdivision and the number assigned by OILSR to such subdivision. Upon demand by the Secretary made at any time during the calendar year, the developer shall, without delay, file such copies of such acknowledged statements as shall be requested by the Secretary.

(k) The sale or lease of lots each of which exceeds 10,000 square feet and each of which will be sold for less than $100, including closing costs.

(l) The sale or lease of lots where the offering is entirely or almost entirely intrastate.

(m) The lease of lots for a term not to exceed 5 years, provided the terms of the lease do not obligate the lessee to renew.

§ 1710.15 Exemption advisory opinions.

A developer may obtain an advisory opinion from the Secretary as to whether an offer is exempted from the Act and the regulations in this part. Such opinion may be obtained in either of the following ways:

(a) By filing a statement of record as provided in § 1710.20 and in the form prescribed in § 1710.105, accompanied by the filing fees required by § 1710.35 and a statement of facts and applicable law under which the developer believes the offer to be exempt. Unless the developer receives an opinion that the offer is exempted, the provisions of § 1710.20 shall apply with respect to the effective date of the statement of record.

(b) By filing a partial statement of record in the form prescribed in § 1710.125, accompanied by the filing fee required by § 1710.35(g) and a statement of facts and applicable law under which the developer believes the offer to be exempt.

§ 1710.20 Statement of record and property report.

(a) Except as otherwise provided in this section, the statement of record shall be in the form set forth in § 1710.105 and shall meet each of the following requirements:

(1) Include a property report in the form set forth in § 1710.110.

(2) Be supported by complete information and supporting documentation as indicated in the prescribed form.

(3) Be filed in duplicate with the Secretary by personal delivery or by certified mail, return receipt requested, addressed to the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, Washington, D.C. 20411.

(b) The form of the statement of record and property report may be as required by State authorities if filed in accordance with the provisions of § 1710.25 and if the property report or similar instrument approved by the State is accompanied by a statement in the form set forth in § 1710.115. This statement shall be delivered to the purchaser simultaneously with the State property report.

(c) If an offering relates to lots which will be offered pursuant to the same common promotional plan as lots previously offered and covered by an effective statement of record, a developer shall file a new statement of record covering the additional lots. The developer may consolidate the new statement of record with the prior statement by incorporating by reference the information in the prior statement. The developer shall include in the consolidated statement of record any material changes which have occurred since the original filing and the consolidated statement of record must conform to all pertinent rules and regulations applicable to an original statement of record. Such consolidated statement of record shall be treated as a new statement of record for the purpose of determining the date of filing and the effective date thereof.

(d) The date of filing of a statement of record is the date the statement, accompanied by the required fee, is received by the Secretary.

(e) Except as provided in §§ 1710.40 and 1710.25 and unless the effective date is suspended by the Secretary in accordance with the provisions of § 1710.45, the effective date of the statement of record shall be the thirtieth day after the date of filing or such earlier date as the Secretary may determine.

§ 1710.25 State filings.

Except as provided in paragraph (c) of this section, if a developer complies with the requirements of § 1710.115 with respect to the property report and the requirements of § 1710.120 with respect to the statement of record, a copy of material filed with State authorities and allowed to become effective by such authorities shall be an effective statement of record, an amendment thereto, or an effective consolidation of a subsequent statement of record into an earlier statement of record, as of the date of filing such copy together with the required fee with the secretary, as follows:

(a) With respect to a subdivision located in California, Florida, New York, or Hawaii, where the material is filed in full compliance with the laws and requirements of the authorities of such State, with the exception that material filed with the State of Hawaii will not be acceptable if it was filed with that State prior to the enactment of Act 223, Session Laws of Hawaii 1967, and material filed with the State of Florida will not be acceptable if it was filed with that State prior to the enactment of section 478, Florida statutes, effective August 1, 1967.

(b) With respect to a subdivision located outside of California, Florida, New York, or Hawaii and covered by material filed with any such State, if all lots and tracts in such subdivision have been made the subject of the State filing and if there has been full compliance with the laws and requirements of the authorities in such State, with the exception that material filed with the State of Hawaii will not be acceptable if it was filed with that State prior to the enactment of Act 223, Session Laws of Hawaii 1967 and material filed with the State of Florida will not be acceptable if it was filed with that State prior to the enactment of section 478, Florida statutes, effective August 1, 1967.

(c) A statement of record or similar instrument filed in a State which is not named in paragraph (a) or (b) of this section and which has been allowed to become effective as a filing by the authorities in a State named in paragraph (a) or (b) of this section may not be filed with the Secretary for the purpose of complying with this section.

§ 1710.30 Amendments.

(a) An amendment to a statement of record shall be filed if any change occurs affecting any material fact required to be contained in a statement of record filed with the Secretary except that additional lands offered for disposition pursuant to the same common promotional plan shall not be incorporated into an effective statement of record by amendment. A statement of record for such an offering may be consolidated with an effective statement of record as provided in § 1710.20.

(b) If an amendment to a statement of record is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed unless such amendment is filed with the consent of or pursuant to an order of the Secretary.

(c) If an amendment to the statement of record is filed prior to the effective date of the statement and with the consent of or pursuant to an order of the Secretary, such amendment shall be treated as being filed as of the date of filing of the statement of record. Any such amendment shall be deemed to have been filed pursuant to the Secretary's consent or order only when the Secretary so advises.

(d) Any amendment to a statement of record shall be accompanied by a letter fully explaining its purpose. The letter shall identify the statement of record by OILSR filing number and shall include any and all changes to the original statement. Each change set forth in the letter shall be prefaced by an identification of the part or subpart of the statement of record to which the change relates. If the amendment requires a change in the property report, the developer shall also include a revised property report.

(e) The date of filing an amendment shall be the date the amendment is received by the Secretary.

(f) Except as provided in paragraph (c) of this section, and §§ 1710.25 and 1710.40, and unless the effective date is suspended by the Secretary in accordance with the provisions of § 1710.45, the effective date of the amendment shall be the 30th day after the date of filing or such earlier date as the Secretary may determine.

§ 1710.35 Payment of fees.

(a) Except as provided in paragraphs (b) and (c) of this section, a filing fee, not to exceed $1,000, shall be paid with the filing of a statement of record and shall be computed as follows:

(1) A basic fee in the amount of $250, plus

(2) An additional fee of $50 for each 50 lots or fraction thereof included in the offering.

(b) A filing fee, not to exceed $1,000, shall be paid with the filing of a statement of record consolidating additional lots with a prior statement of record filed on lots in a subdivision and shall be computed as follows:

(1) A basic fee in the amount of $200, plus

(2) An additional fee of $50 for each 50 lots or fraction thereof included in the offering.

(c) If a developer files pursuant to § 1710.25, a filing fee, not to exceed $1,000, shall be paid with the filing and shall be computed as follows:

(1) In the case of an initial filing:

(i) A basic fee in the amount of $200, plus

(ii) An additional fee of $25 for each 50 lots or fraction thereof included in the offering.

(2) In the case of a State filing pursuant to § 1710.25 which involves a statement of record consolidating additional lots with a prior statement of record filed in a State:

(i) A basic fee in the amount of $100, plus

(ii) An additional fee of $25 for each 50 lots or fraction thereof included in the offering.

(3) If a State will not permit a developer to consolidate a filing on additional lots into a previous statement of record filed in the State, the filing shall be treated as an initial filing and the filing fee shall be paid and computed in accordance with subparagraph (1) of this paragraph.

(d) No fee shall be required in connection with the filing of an amendment to a statement of record.

(e) Fees shall be paid by certified or cashier's check or postal money order made payable to the Treasury of the United States.

(f) If the developer files pursuant to § 1710.105 and includes a request for an exemption advisory opinion pursuant to § 1710.15(a) and the Secretary advises that the offering is exempt, the filing fee submitted by the developer except for an amount of $100 shall be refunded.

(g) If a developer files a partial statement of record-request for exemption pursuant to §§ 1710.15(b) and 1710.125, a filing fee, in the amount of $100, shall be paid with the filing. If the Secretary advises that the filing is not exempt, this fee shall apply as a credit toward the payment of the fee required for filing a complete statement of record.

§ 1710.40 Early effective date for sales in progress.

(a) A developer, who is or will be selling lots in a subdivision which has been subdivided or which has been platted of record and who is or will be engaged in an active sales program prior to May 28, 1969, may file a statement of record prior to that date. Such statement of record shall become effective on April 28, 1969, or on the date of its filing with the Secretary, whichever is the later, if the developer has complied with the requirements of paragraph (b) of this section. In no event may a developer subsequent to April 23, 1969, and prior to May 28, 1969, continue or begin a sales program until a statement of record has been filed with the Secretary.

(b) To qualify for an early effective date in accordance with the provisions of this section, the developer shall submit with the statement of record a letter stating that he is or will be selling lots in a subdivision which has been subdivided or which has been platted of record and that he is or will be engaged in an active sales program prior to May 28, 1969.

(c) Qualification for an early effective date hereunder shall not preclude the Secretary from making a review of the statement of record subsequent to the effective date thereof to determine its completeness and accuracy nor does the acceptance of such statement of record constitute a waiver of the right of the Secretary to make such review and to require such additional information as may be necessary to bring the statement or record into conformity with the Act and these rules and regulations.

§ 1710.45 Suspensions.

(a) *Suspension notice—prior to effective date.* (1) A suspension notice with respect to a statement of record or an amendment may be issued to a developer within 30 days after receipt by the Secretary if any of the following occurs:

(i) Prior to its effective date, the Secretary has reasonable grounds to believe that a statement of record is on its face incomplete or inaccurate in any material respect.

(ii) Prior to its effective date, the Secretary has reasonable grounds to believe that an amendment is on its face incomplete or inaccurate in any material respect.

(2) Suspension notices issued pursuant to this section shall suspend the effective date of the statement or the amendment until 30 days, or such earlier date as the Secretary may determine, after the developer files such additional information as the Secretary shall require.

(3) A developer, upon receipt of a suspension notice may request a hearing, and such hearing shall be held within 20 days of receipt of such request by the Secretary.

(b) *Notice of proceeding; suspension orders—subsequent to effective date.* (1) A notice of proceedings to suspend an effective statement of record may be issued to a developer if any of the following occurs:

(i) The Secretary has reasonable grounds to believe that an effective statement of record includes an untrue statement of a material fact, or omits a material fact required by the Act or the rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading.

(ii) The Secretary undertakes an examination of a developer or his records to determine whether a suspension order should be issued and the developer fails to cooperate with the Secretary, or obstructs, or refuses to permit the Secretary to make such examination.

(iii) Upon receipt of an amendment to an effective statement of record, the Secretary has reasonable grounds to believe that in the public interest or for the protection of purchasers, the statement of record should be suspended.

(2) The Secretary may, after notice, and after opportunity for a hearing, issue an order suspending the statement of record.

(3) In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the statement of record or otherwise complied with the requirements of the order. When the developer has complied with the requirements of the order, the Secretary shall so declare and thereupon the suspension order shall cease to be effective.

Subpart B—Reporting Requirements

§ 1710.101 Claim of exemption—form of affirmation.

A claim of exemption pursuant to § 1710.10(j) shall be made to the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, and shall be supported by an affirmation as follows:

CLAIM OF EXEMPTION

I hereby affirm on this _____ day of _____, 19__, as follows:

(1) I am the developer, or the duly authorized agent of the developer, of the subdivision known as _____ located at _____, in the State of _____, County of _____.

(2) Each and every purchaser or lessee of a lot to be covered by this exemption, or his or her spouse, will have made a personal on-the-lot inspection of the real estate which he purchases or leases prior to the time of sale or lease of the lot and will have acknowledged in writing, prior to such time of sale or lease, receipt of a statement furnished by the developer setting forth all reservations, taxes, assessments and restrictions applicable to the lot to be purchased or leased, whether or not such reservations, taxes, assessments and restrictions are included within the term "liens, encumbrances and adverse claims" as used in paragraph (8) below.

(3) This affirmation is accompanied by a Statement of Reservations, Restrictions, Taxes and Assessments prepared in accordance with the provisions of 24 CFR 1710.102 and that the Secretary's approval of such statement will be obtained prior to the distribution and use of such statement.

(4) The Statement of Reservations, Restrictions, Taxes, and Assessments is complete and correct.

(5) A copy of such statement will be furnished to each purchaser or lessee prior to signing the contract.

(6) The receipt of such statement will be acknowledged in writing, in duplicate, by the purchaser or lessee prior to the time of the signing of the contract.

(7) A copy of the acknowledged statement will be filed with the Secretary within 31 days after the expiration of the calendar year in which the sale or lease is made. Upon demand by the Secretary made at any time during the calendar year, the developer shall file such copies of such acknowledged statements as shall be specified by the Secretary.

(8) At the time of sale or lease, the lot will be free and clear of all liens, encumbrances, and adverse claims. The term "liens, encumbrances and adverse claims" (as used in this paragraph (8)) is not intended to include property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, nor to taxes and assessments imposed by a State, by any other public body having authority to assess and tax property or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable, nor to beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision.

(9) For the purpose of this claim of exemption, the undersigned agrees that the "time of sale or lease" shall be deemed to be the date the sales contract or lease is signed by the purchaser or lessee except that the "time of sale" shall be deemed to be the effective date of the conveyance or lease if both of the following requirements are met:

(a) The contract of sale requires delivery of a deed to the purchaser within 120 days following the signing of the sales contract.

(b) Any earnest money deposit or other payment on account of the purchase price made by the purchaser prior to the effective date of the conveyance will be placed in an escrow account, fully protecting the interests of the purchaser, in an institution or organization which has trust powers, or in an established bank, title insurance or abstract company, or escrow company doing business in the jurisdiction in which the property is located.

(Title)

(If the affirmation is made by an agent of the developer of the subdivision, submit written authorization to act as agent.)

§ 1710.102 Statement of Reservations, Restrictions, Taxes, and Assessments—format and instructions.

A Statement of Reservations, Restrictions, Taxes, and Assessments shall be prepared by the developer in accordance with the following format and instructions:

STATEMENT OF RESERVATIONS, RESTRICTIONS, TAXES, AND ASSESSMENTS

Employer's IRS No.:_____
Developer:_____
Owner:_____
Name of Developer:_____
Address:_____
Owner (if Developer is other than owner):_____
_____
Address:_____
Name of Subdivision:_____
Location:_____
Number of lots in Subdivision:_____
Number of acres in Subdivision:_____

1. *Reservations and restrictions.*

(The developer shall set forth, in descriptive and concise terms, a complete statement of all reservations and restrictions affecting the property within the above-named subdivision. Where reservations or restrictions are not applicable to all lots within a subdivision the statement shall identify the lots affected. State whether such reservations and restrictions are enforceable by other lot owners or lessees of lots in the subdivision.)

2. *Taxes.*

(The developer shall set forth, in descriptive and concise terms, a complete statement listing all taxes and liens presently due and payable and those which constitute liens on the property before they become due and payable, together with the date such taxes will become due and payable. Itemize taxes, amounts and rates by lots. Where taxes, amounts or rates shown are not yet available for the current calendar year, those for the previous year should be shown with a statement that they are not for the current year and that the new taxes, amounts or rates may vary; and, if property has been rezoned or subdivided since the last taxing period, the estimated amount of changes for the current year should also be shown. Where the previous year's taxes were based other than on lots as presently subdivided, estimates should be shown and so identified.)

3. *Assessments.*

(The developer shall set forth in descriptive and concise terms a statement of all assessments which are made or may be made by state or local authorities or by a property owners' association or similar organization. The statement shall include any dues or fees paid in the last year or payable to a property owner's association. Itemize assessments, dues, fees, amounts and rates. State the authority under which the assessments, dues and fees are imposed.)

WARNING: This subdivision is not registered with the Office of Interstate Land Sales Registration nor has that Office passed upon the accuracy or adequacy of this statement, nor does this statement serve as an endorsement or recommendation by that Office of the above offering.

The undersigned by his signature hereby acknowledges that he has received a Statement of Reservations, Restrictions, Taxes, and Assessments, on (identify subdivision and location) from (name of developer) located at (address) and that he has made a personal on-the-lot inspection of (at the time of delivery to the purchaser or lessee insert a legal description of the particular lot) which is the lot upon which the undersigned plans to execute a contract of sale or lease.

(Date)

(Signature of purchaser or lessee)

§ 1710.105 Statement of record—format and instructions.

The statement of record required by § 1710.20 shall be prepared in accordance with the format and instructions as follows:

Employer's IRS No.: _____
Developer: _____
Owner: _____

STATEMENT OF RECORD

Name of subdivision: _____
Location: _____
Name of developer: _____
Developer's address: _____
Authorized agent: _____
Authorized agent's address: _____

PART I. ADMINISTRATIVE INFORMATION

A. Identification and filing information:
1. _____
2. _____
3. _____
B. General information:
1. _____
2. _____
3. _____
4. _____
5. _____
6. *Acres owned* _____
Acres under option or other similar arrangement _____
Total _____
C. Filings with State authorities:
1. _____
2. _____
D. Supporting documentation:
1. _____
2. _____

PART II. DEVELOPERS AND HOLDERS OF OWNERSHIP INTERESTS IN LAND

A. Holder of ownership interest_____
Type of legal entity_____
Extent and type of interest_____
B. Holder of interest in developer_____
Type of legal entity_____
Extent and type of interest_____
C. Supporting documentation_____

PART III. IDENTITY OF INTEREST IN MORE THAN ONE FILING

A. Subdivision _____
Location _____
OILSR number_____
Date of filing_____
B. Suspensions _____

PART IV. LEGAL DESCRIPTION, TOPOGRAPHY, CLIMATE, SUBDIVISION MAP

A. Legal description_____
B. Topography and physical characteristics:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
C. Climate and temperature:
1. _____
2. _____
D. Environmental factors:
1. _____
2. _____
E. Subdivision map:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
F. Supporting documentation:
1. _____
2. _____

PART V. CONDITION OF TITLE, ENCUMBRANCES, DEED RESTRICTIONS, AND COVENANTS

A. _____
B. _____
C. _____
D. _____

PART VI. GENERAL TERMS AND CONDITIONS OF OFFER, PROPOSED RANGE OF SELLING PRICES OR RENTS

A. Summary of General Terms and Conditions of Offer:
1. _____
2. _____
3. _____
B. Proposed range of selling prices or rents_____
C. Supporting documentation:
1. _____
2. _____
3. _____

PART VII. ACCESS, NEARBY COMMUNITIES, ROAD SYSTEM WITHIN THE SUBDIVISION

A. Access—Nearby communities:
1. _____
2. _____
3. Name of community_____
Population _____
Distance over paved roads_____
Distance over unpaved roads_____
Total _____
B. Road system within the subdivision:
1. _____
2. _____
3. _____
C. Supporting documentation:
1. _____
2. _____
3. _____

PART VIII. UTILITIES

A. Water:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. Supporting documentation:
a. _____
b. _____
c. _____
d. _____
B. Electricity:
1. _____
2. _____
3. _____
4. _____
5. _____
6. Supporting documentation:
a. _____
b. _____
c. _____
C. Gas:
1. _____
2. _____
3. _____
4. _____
5. _____
6. Supporting documentation:
a. _____
b. _____
c. _____
D. Telephone:
1. _____
2. _____
3. _____
4. _____
5. _____
6. Supporting documentation:
a. _____
b. _____
c. _____
E. Sewage disposal:
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. Supporting documentation:
a. _____
b. _____
F. Drainage and flood control:
1. _____
2. _____
3. _____
4. _____
5. Supporting documentation:
a. _____
b. _____
G. Television:
1. _____
2. _____

PART IX. RECREATIONAL AND COMMON FACILITIES

A. _____
1. _____
2. _____
3. _____
4. _____
B. _____

PART X. MUNICIPAL SERVICES

A. Fire protection:
1. _____
2. _____
3. _____
B. Police protection _____
C. Garbage and trash collection:
1. _____
2. _____
3. _____
D. Public schools
1. Elementary school:
a. _____
b. _____
c. _____
2. Junior high school:
a. _____
b. _____
c. _____
d. _____
3. High school:
a. _____
b. _____
c. _____
d. _____
E. Medical and dental facilities:
1. Hospital facilities:
a. _____
b. _____
c. _____
d. _____
e. _____
2. Physicians and dentists:
a. _____
b. _____
F. Public transportation:
1. _____
2. _____
3. _____
4. _____

PART XI. TAXES AND ASSESSMENTS—COMMON FACILITIES

A. _____
B. _____

PART XII. OCCUPANCY STATUS

A. _____
B. _____
C. _____

PART XIII. SHOPPING FACILITIES

A. _____
B. _____

PART XIV. FINANCIAL STATEMENT

A. _____
B. _____

PART XV. AFFIRMATION

AFFIRMATION

I hereby affirm that I am the developer of the lots herein described or will be the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by such developer to complete this statement (if agent, submit written authorization to act as agent);

That the statements contained in this statement of record and any supplement thereto, together with any documents submitted herewith, are full, true, complete, and correct;

That the fees accompanying this application are in the amount required by the rules and regulations of the Office of Interstate Land Sales Registration.

_____ _____
(Date) (Signature)

_____ _____
(Corporate seal if applicable) (Title)

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (Title XIV of P.L. 90-448, 82 Stat. 590, enacted on Aug. 1, 1968) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact * * *, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

INSTRUCTIONS FOR COMPLETION OF STATEMENT OF RECORD

These instructions must be followed in completing the statement of record. All spaces in the specified format must be completed. The format must not be changed in any respect, except as follows:

a. Spaces provided in the format may be enlarged or extended for the purpose of providing a comprehensive explanation.

b. In addition to the information expressly required to be stated in the statement of record, there shall be added such further material information, if any, as may be necessary to make the required statements in the light of the circumstances under which they are made, not misleading.

c. If a filing is to be consolidated pursuant to § 1710.20(c), the present filing may incorporate by reference any of the material in the previous filing. This shall be accomplished by placing after the applicable Part or Subpart in the format the OILSR number of the previous filing and the appropriate Part, Subpart or exhibit and page number.

To facilitate proper filing, statements of record shall be filed on good quality, unglazed, white paper, approximately 8½ by 13 inches in size, with a 2-inch margin at the top and a 1½-inch margin on each side. They shall be in black ink in standard elite or pica type. They may be printed, lithographed, mimeographed, or typewritten; but the standard size of elite or pica type must be used. Deeds, title policies, subdivision maps or plats, and other supporting documents may be on different size paper but should be folded to the 8½- by 13-inch size. A copy of the property report in the form that it will be given to the purchaser must be attached to the statement of record.

Statements of record shall be filed in duplicate and at least one copy shall be signed.

In the upper right hand corner, the developer shall give his Employer's IRS number as well as that of the owner of the subdivision, if the developer is not the owner. The name at the heading of the statement of record shall be the common promotional name used for the subdivision. The name and address of the authorized agent shall be the name and address of the party designated by the developer to receive correspondence and to receive service of process or notice of any action taken by OILSR. In all filings, including filings by foreign developers, the authorized agent shall be a resident of the United States.

The supporting documents required by the various parts of these instructions shall be attached as exhibits at the back of the statement of record. Each exhibit shall be identified by affixing a tab on the right side of the cover sheet of the exhibit and by identifying thereon the applicable Part and Subpart by Roman numeral, letter and Arabic number. The pages of each exhibit shall be numbered beginning with the number one for the first page in each exhibit and numbering the remaining pages in the exhibit sequentially. If, at a later time, additional data is furnished to be incorporated into, or to amend, an exhibit, the pages of the additional data shall be numbered beginning with the number following the last page number in the exhibit and following sequentially therefrom. If the information in an exhibit is applicable to more than one part, the developer may incorporate that information by reference to the appropriate exhibit and to the applicable page or pages within that exhibit.

The developer shall mark the property report filed with the Office of Interstate Land Sales Registration with references to the appropriate information in the statement of record and in the exhibits attached thereto.

If a statement in the property report is supported by both an item in the statement of record and in an exhibit, reference shall be made to both sources. This shall be accomplished by placing the appropriate part and subpart number or the appropriate exhibit number and the page number in the right margin immediately adjacent to the applicable statement in the property report.

If an item in the statement of record is supported by information in an exhibit, place the appropriate exhibit and page number in the right margin immediately adjacent to the item. Whenever the statement of record requires a summary or statement of terms or items, such summary or statement must be presented in a clear and concise manner.

Where the documentation required by the statement of record cannot be obtained, a letter stating the reasons therefore must be furnished by the developer, along with the best alternative assurance available.

The following instructions correspond to the Part and Subpart letters and numbers set forth in the statement of record format.

PART I. ADMINISTRATIVE INFORMATION

A. Identification and filing information.

1. State whether the filing is an initial filing with the Office of Interstate Land Sales Registration on the subdivision or an additional offering of lots to be consolidated with a statement of record previously filed for lots offered under the same common promotional plan. If the filing is to be consolidated, identify the OILSR filing number assigned to the original statement of record.

2. Do you intend to make subsequent filings for additional lots within the subdivision?

3. Are you submitting documentation to support a claim of exemption? If so, see instruction in D.1 of this part.

B. General information.

1. Name the State, Commonwealth, territory, or possession of the United States or the country in which the subdivision is located.

2. Name the county or counties or other political subdivision or subdivisions within which the subdivision is located.

3. State the number of lots in this offering.

4. If more than one offering of lots in the subdivision has been made or will be made, state the number of lots to be offered in the entire subdivision. See instruction D.2 of this part.

5. State the number of acres included in this offering.

6. If more than one offering of lots in the subdivision has been made or will be made, state the number of acres owned, the number of acres under option or other similar arrangement for acquisition of title to the land and the total number of acres to be offered pursuant to the same common promotional plan.

C. Filings with State authorities.

1. If a statement of record or similar instrument for the subdivision has been filed in any State or States, list the State or States.

2. If any of the States listed in answer to fig. 1 above has not permitted the filing to become effective or has suspended the filing, give reasons cited by the State and also the developer's reasons, if different from those cited by the State.

D. Supporting documentation.

1. If you are requesting an Exemption Advisory Opinion pursuant to section 1710.15 of these rules and regulations, your request should be entitled "Request for Exemption" and include a statement of applicable facts and law. The statement shall include all information necessary for the consideration of the merits of the proposed offering in relation to the Interstate Land Sales Full Disclosure Act. Except for requests for exemption made prior to April 28, 1969, relating to sales programs that are in progress, the offering must be prospective; and the information submitted must affirmatively disclose that both the offering and the operations contemplated thereunder will not be inconsistent with the provisions of the Interstate Land Sales Full Disclosure Act.

2. If the present offering is a subdivision which is or will be offered with one or more additional subdivisions having recreational and/or other common facilities, submit the general or total plan. Include a map showing the total land owned or under option or other similar arrangement for acquisition of title to the land; and delineate thereon the land included in this offering.

PART II. DEVELOPERS AND HOLDERS OF OWNERSHIP INTERESTS IN LAND

A. List the name and address and the type and extent of interest of each holder of any ownership interest in the land included in this offering. (Individual lot owners or lessees who have purchased or leased lots from the developer need not be listed.) If the holder is other than an individual, name the type of legal entity and list the interest and the extent thereof, of each principal. For the purposes hereof, "principal" shall mean any person or entity having a 10 percent or more financial interest.

B. If the developer does not own an interest in the land, list name and address of each individual or entity having an ownership interest in the developer. If the developer is other than an individual, name the type of legal entity and list the interest, and the extent thereof, of each principal. For the purposes hereof, principal shall mean any person or entity having a 10 percent or more financial interest.

C. If the developer is a corporation, submit a copy of the Articles of Incorporation, with all amendments thereto; and a list of the officers and directors of the corporation.

If the developer is a trust, submit copies of the instruments creating the trust.

If the developer is a partnership, unincorporated association, joint stock company, or any other form of organization, submit copies of articles of partnership or association and all other documents relating to its organization.

If the holder of any ownership interest in the land being offered is a person or entity other than the developer, submit copies of the above documents for such holder. (For purposes of this Subpart C, it is not necessary to include the sales agent if the sales agent is a legal entity other than a holder of an ownership interest in the land.)

PART III. IDENTITY OF INTEREST IN MORE THAN ONE FILING

A. Are any of the holders of an ownership interest in the land or the developer, or any principals in the holder or developer, directly or indirectly involved in any other subdivision or development which has been filed with the Office of Interstate Land Sales Registration? If so, identify by subdivision name, location, OILSR number or numbers, and date of filing. If not applicable, state "None."

B. Has a suspension order been issued with respect to any statement of record identified in Subpart A? If so, give reasons. (Do not include the suspension of a statement of record prior to its effective date or the suspension of an amendment prior to its effective date.)

PART IV. LEGAL DESCRIPTION, TOPOGRAPHY, CLIMATE, SUBDIVISION MAP

A. Legal description. Include an adequate legal description acceptable in the political subdivision for conveyancing of the land included in this offering; and if additional offerings have been made or will be made pursuant to a common promotional plan, include a legal description of the total area offered or to be offered pursuant to the common promotional plan.

B. Topography and physical characteristics.

1. Describe the general topography and physical characteristics of the subdivision; for example, level, hilly, rocky, etc.; soil conditions, for example, loose sand, alkaline, etc.

2. State whether any of the lots or portion thereof, in the offering, are covered by water at any time of the year.

3. Is the property subject to a flood control easement?

4. What percentage of the land in the subdivision will require corrective work, other than fill, before construction of a one-story residential structure? If any, describe type of work and plans for correction; and state the estimated cost to buyer or lessee.

5. Will any unusual construction techniques be necessary to build on any part of land? If so, describe.

6. What percentage of the land will require fill before construction? If any, describe plans for fill, including composition, and estimated cost to lot buyer or lessee.

7. State elevation of the highest and lowest lots in the subdivision.

C. Climate and temperature.

1. Describe general weather conditions of the area and state whether the area is subject to sandstorms, windstorms, or any other unusual weather phenomena.

2. State temperature ranges for summer and winter, including high, low and mean.

D. Environmental factors.

1. Is the land subject to any unpleasant odors, noises, pollutants or other nuisances? If so, describe.

2. Do you know of any proposed plans, private or governmental, for construction of any facility which may create a nuisance or adversely affect the use of the land?

E. Subdivision map.

1. State whether a subdivision map has been filed with and accepted for recording by local authorities. If so, give recording data.

2. Has each lot in the subdivision been surveyed?

3. Has each individual lot been staked or marked so that the buyer can identify the boundary lines of his lot? If not, state estimated cost to purchaser or lessee to obtain a survey and to have boundary lines staked or marked.

4. Will all streets shown on the tract map, if any, be public streets?

5. Has legal access been provided to each of the individual lots within the subdivision?

6. State minimum width of legal access to the lots.

F. Supporting documentation.

1. Copy of an accurate map prepared to scale showing the dimensions of the lots and their relation to existing streets and roads. (To comply with this requirement, supply a map or maps which have been submitted to local authorities, if available.) If the land has not been divided, include a map showing the proposed division, lot dimension and their relationship to existing streets and roads.

2. Copy of the current Geological Survey Topographic Map or Maps of the largest scale available from the U.S. Geological Survey, Washington, D.C., with an outline of the subdivision area clearly indicated thereon.

PART V. CONDITION OF TITLE, ENCUMBRANCES, DEED RESTRICTIONS AND COVENANTS

A. State condition of the title to the land comprising the subdivision, including all encumbrances, easements, covenants, conditions, reservations, limitations or restrictions applicable thereto. This requirement may be

met only by submission of title evidence in the form of (1) an original or copy of a fee or owners policy of title insurance, a guaranty or guarantee of title, or a certificate of title, or an interim title binder or commitment for title insurance, or similar instrument issued by a title company, duly authorized by law to issue such instruments in the State in which the subdivision is located; or (2) a legal opinion, stating the condition of title, prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the State in which the property is located.

The title evidence shall be dated as of a date no earlier than 20 business days preceding the date of this filing and shall include:

1. A legal description of all of the property included in this offering together with a legal description of the property upon which there is or will be located any common areas or facilities which will be advertised as being available for the benefit or use of purchasers of lots. (Where the legal description does not specifically describe as individual parcels each of the lots included in this offering, an affirmative statement, to the effect that each of the lots included in the offering is encompassed by the description, is required.)

2. The name of the person(s) or other legal entity(ies) holding fee title to the property described.

3. The name of any person(s) or other legal entity(ies) holding a leasehold estate or other interest of record in the property described.

4. A listing of any and all exceptions or objections to the title, estate or interest of the person(s) or legal entity(ies), referred to in (2) or (3) above, including any encumbrances, easements, covenants, conditions, reservations, limitations, restrictions of record. (Any reference to exceptions or objections to title shall include specific references to the instruments in the public records upon which the exception is based.) When an objection or exception to title affects less than all of the property included in this offering, the title evidence should specifically note which lots are affected.

5. Copies of all instruments in the public records specifically referred to in (4) above. (Abstracts of such instruments are acceptable if prepared by an attorney or professional or official abstracter qualified and authorized by law to prepare and certify to abstracts and if the abstracts contain the material portion of the recorded instruments to determine the nature and effect of such instruments.)

Where the title evidence is dated earlier than 20 days prior to the date of filing, the requirement for a statement of the condition of title may be met by submitting that evidence together with an attorney's opinion of title covering the period from the date of the title evidence to a date no earlier than 20 business days preceding the date of the filing. The attorney's opinion shall be prepared and signed by an attorney at law experienced in the examination of titles and a member of the Bar in the State in which the property is located.

B. Describe and furnish copies of any instrument, not of public record, known to the developer, which if recorded, would affect the condition of title. (Copies of instruments to individual lot owners or lessees who have purchased or leased lots from the developer need not be described or furnished.)

C. State the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under any instrument or instruments, referred to under A or B, above, which create a blanket encumbrance upon the property, or any portion thereof, described under A, above.

D. Describe and furnish copy(ies) of any trust deed(s), deed(s) in trust, escrow agreement(s) or other instrument(s) which purport to protect the purchaser in the event of default by the person or persons bound to fulfill obligations under any instrument or instruments, referred to under A or B, above, which create a blanket encumbrance upon the property or any portion thereof, described under A, above.

PART VI. GENERAL TERMS AND CONDITIONS OF OFFER, PROPOSED RANGE OF SELLING PRICES OR RENTS

A. Summarize the terms and conditions of the offer and of the contract of sale or lease. The summary must include, but shall not be limited to:

1. A statement of the terms of release of lots from the blanket encumbrance, if the subdivision, or any portion thereof, is subject to a blanket encumbrance. If there is no provision for release, describe any legal steps taken to protect the purchaser or lessee in the event the obligor on the blanket encumbrance defaults.

2. A statement of the disposition which will be made of earnest money or good faith deposits and downpayments or other payments received from buyers or lessees including any steps taken to protect the buyer or lessee in the event the seller or lessor does not perform his obligations under the contract.

3. A statement of the disposition which will be made of earnest money or good faith deposits and downpayments and other payments received from buyers or lessees who default under the terms of the contract.

B. State the range of selling prices or rents for lots in the subdivision.

C. Supporting documentation.

1. A copy of all forms of contracts or agreements to be used in selling or leasing lots. (The contracts or agreements must contain language (a) giving the purchaser the option to void the contract or agreement if he does not receive a property report prepared pursuant to the rules and regulations of the U.S. Department of Housing and Urban Development, in advance of, or at the time of, his signing the contract or agreement; and (b) giving the purchaser the right to revoke the contract or agreement within 48 hours after signing the contract or agreement if he did not receive the property report at least 48 hours before signing the contract or agreement. [The contract or agreement may stipulate that the revocation authority shall not apply in the case of a purchaser who (i) has received the property report and inspected the lot to be purchased or leased in advance of signing the contract or agreement, and (ii) acknowledges by his signature that he has made such inspection and has read and understood such report.])

2. A copy of the agreement, if not included in the sales contract, in which seller agrees with buyer to release lots from any blanket encumbrance.

3. Copies of deeds and leases by which the developer will lease or convey title to the lots to purchasers or lessees.

PART VII. ACCESS, NEARBY COMMUNITIES, ROAD SYSTEM WITHIN THE SUBDIVISION

A. Access—nearby communities.

1. Describe present condition of access routes to the subdivision, including type and width of road surface and number of lanes.

2. Are any improvements proposed to access routes? If so, state who will bear the cost of the improvements and the estimated completion date. If the improvements are to be made by a local governmental authority, state the name of the authority, and the source of funds to complete the improvements. If lot owners will be subject to a special assessment or similar charge for such improvements which shall be a lien on the lots in the subdivision, so state.

3. List nearest large cities and the county seat, and the population of each. List the total distance to the center of the subdivision from each and the portion of that distance which is paved and unpaved. If the geographical center of the subdivision is located more than 50 miles from a large city or the county seat, list also the nearest established community or communities.

B. Road system within the subdivision.

1. Describe the present condition of the road system within the subdivision, including the type and width of road surface, number of lanes and approximate dedicated width of roads. State whether all of the lots in the subdivision can be reached by conventional automobile.

2. State any proposed improvements to the road system within the subdivision, the percentage completed, and the estimated schedule for completion. State who will bear the cost of the improvements; and if any of the cost is to be borne by the purchaser, state the estimated cost to the purchaser.

3. State whether the roads within the subdivision have been dedicated to and accepted by a public authority responsible for maintenance. If not dedicated and accepted, state who will be responsible for maintenance. If the lot owner will be responsible for maintenance state the estimated cost to the purchaser.

C. Supporting documentation.

1. If the developer is to complete access routes, submit copies of contracts and copy of any bonds or escrow agreements to guarantee completion thereof. If the access routes are to be completed by the local government, a copy of a letter from the local authorities setting forth the plan for the completion of access routes and maintenance thereof.

2. Copies of contracts for the completion of the road system within the subdivision and copy of the bond or escrow agreements to assure completion thereof.

3. Copy of letter from local authority setting forth the plan for maintenance of the road system with the subdivision.

PART VIII. UTILITIES

A. Water.

1. State the availability of the water supply and whether the supply will be adequate to serve the anticipated population of the area.

2. Is the water supplied or to be supplied by a public or private utility company? If so, state the name and address and whether the company is regulated by a public body. If not, is there any other means of assurance of continuous service at reasonable rates?

3. State whether the water lines will be extended to the individual lots. If they are to be extended, state the estimated schedule for the extension and the assurance of completion.

4. State estimated cost of installation or construction to be borne by the purchaser, if any.

5. Is the water supply to be obtained from private well? If so, indicate (1) probable depth and (2) results of test borings or other data establishing that a sufficient quantity of potable water is available to each buyer or lessee and (3) estimated total completion cost to buyer or lessee.

6. If water is provided by a supplier not regulated by a public body, state the rate schedule.

7. If privately supplied water or individual wells are to be the source of water for

human use, has the cognizant State or county health authority issued a report on the quality of the water?

8. Supporting documentation.

a. Copy of a letter from water company stating that it will supply the water.

b. Copy of the contract for construction, if any, and the bond or escrow agreement to assure completion of the facility, if any.

c. If available, copy of engineer's report or geological report or any other data indicating the source and quantity of water.

d. Copy of letter or report from cognizant health officer on quality and purity of water.

B. Electricity.

1. State whether electricity is available and, if so, the name and address of the supplier from which it may be obtained.

2. Is the supplier a public or private utility company? State whether the supplier is regulated by a public body. If not, is there any other means of assurance of continuous service at reasonable rates?

3. Have the electrical facilities been extended to the individual lots?

4. If the electrical facilities have not been extended to the individual lots, what is the estimated schedule for installation and what estimated costs, if any, will be borne by the purchaser?

5. State the assurance of completion if the electrical facilities are to be installed by the developer.

6. Supporting documentation.

a. Copy of a letter from the electric company stating that it will supply the electricity.

b. If electricity is provided by a supplier not regulated by a public body state the rate schedule.

c. Copy of the contract for construction of electrical facilities, if any, and any bond or escrow arrangements to assure completion of the facilities.

C. Gas.

1. State the availability of gas including the name and address of the supplier.

2. Is the supplier a public or private utility company? State whether the supplier is regulated by a public body. If not, is there any other means of assurance of continuous service at reasonable rates?

3. Have gas lines been extended to the individual lots?

4. If the gas facilities have not been extended to the individual lots, what is the estimated schedule for installation and what estimated cost will be borne by the purchaser?

5. State the assurance of completion if the gas facilities are to be installed by the developer.

6. Supporting documentation.

a. Letter from the gas supplier stating that it will provide the service.

b. If gas is provided by a supplier not regulated by a public body, state rate schedule for the service.

c. Copy of the contract for construction of the gas facilities, if any, and any bond or escrow arrangements to assure completion of the facilities.

D. Telephone.

1. State the availability of telephone service including the name and address of the supplier.

2. Is the supplier a public or private utility company? State whether the supplier is regulated by a public body. If not, is there any other means of assurance of continuous service at reasonable rates?

3. Have the telephone facilities been extended to the individual lots?

4. If the telephone facilities have not been extended to the individual lots, what is the estimated schedule for installation and what cost will be borne by the purchaser?

5. State the assurance of completion of the telephone facilities if those facilities are to be installed by the developer.

6. Supporting documentation.

a. Copy of a letter from the telephone company stating that the company will supply the service.

b. If telephone service is provided by a supplier not regulated by a public body, state the rate schedule.

c. Copy of the contract for the construction of the telephone services, if any, and any bond or escrow arrangements to assure completion of the facilities.

E. Sewage disposal.

1. State whether sewers are available and, if so, the name and address of the entity responsible for installation and maintenance.

2. Is the entity a public or private utility company? State whether entity is regulated by a public body. If not, is there any other means of assurance of continuous service at reasonable rates?

3. Have the sewage facilities been extended to the individual lots?

4. If the sewage facilities have not been extended to the individual lots, what is the estimated schedule for their installation and what estimated costs will be borne by the purchaser, including construction, installation and connection costs?

5. State the assurance of completion if the sewage facilities are to be installed by the developer.

6. If public sewers are not now installed and are not to be installed, state the alternate sewage disposal method to be used, such as septic tanks or cesspools.

7. If a public sewer is not or will not be installed, state the estimated cost of installing the alternate method of sewage disposal.

8. Will the local health authorities approve the use of an alternate method of sewage disposal? Has such approval been obtained?

9. If use of septic tanks is contemplated, state whether the land is suitable for the use of septic tanks; include in your statement the results of any percolation tests.

10. Supporting documentation.

a. Copy of the contract for construction of the sewage disposal facilities, if any, and any bond or escrow arrangements to assure the completion of the facilities.

b. Copy of a letter from local health authorities stating the methods of sewage disposal which will or will not be permitted.

F. Drainage and flood control.

1. State whether there has been or will be any drainage required to render any of the lots suitable for construction purposes. If so, list the lots, and state estimated cost to purchaser.

2. Have artificial drains, storm sewers, or flood control channels been installed?

3. If these facilities have not been installed, what is the estimated schedule for completion, if any, and what estimated costs or other assessments will the purchaser be expected to pay?

4. If the developer is to install these facilities state the assurance of completion.

5. Supporting documentation.

a. Copy of the contract for the construction of the artificial drains, storm sewers, or flood control channels, if any, and any bonds or escrow agreements to assure completion of the facilities.

b. If drainage is provided or to be provided by a public or private company, submit a letter from the company stating that it will provide the service.

G. Television.

1. Is television reception available to the lots within the subdivision without reception cost?

2. If not, state estimated cost to user.

PART IX. RECREATIONAL AND COMMON FACILITIES

List any common or recreational facilities which have been or are to be installed for the beneficial use and enjoyment of the owners of lots in the subdivision which have not been discussed in the previous parts of the statement of record. Identify each facility and answer the following questions for each:

A. (Name of facility.)

1. If the facility has not been installed, what is the percentage of completion, the estimated schedule for completion and what estimated costs will the purchaser have to pay?

2. What provisions have been made for the maintenance and operation of the facility and what is the estimate of the assessments or other recurring charges to be paid by the purchaser?

3. Include a statement of the assurance of completion of the facility if the developer is responsible for construction.

4. Supporting documentation. Copy of the contract for construction of the facilities, if any, and any bond or escrow arrangements to assure completion of the facilities.

B. (Name of facility.)

PART X. MUNICIPAL SERVICES

A. Fire protection.

1. State the availability of fire protection and list the name and address of the particular force exercising jurisdiction over the subdivision.

2. State whether the service is provided by the municipality or by a volunteer organization.

3. State the distance in terms of road miles from the geographical center of the subdivision to the nearest fire station or substation.

B. Police protection.

State the availability of police protection and list the name and address of the particular force exercising jurisdiction over the subdivision.

C. Garbage and trash collection.

1. State the availability of garbage and trash collection service and the name and address of the company which presently furnishes the service. If garbage and trash collection service is not presently available, state whether such service is proposed; and if it is, give the date on which it will become effective.

2. State whether the cost of the service is to be paid directly by the lot owner or whether the service is to be provided by a municipal agency.

3. If the cost of the service is to be paid directly by the lot owners, state the estimated monthly cost per lot.

D. Public schools.

1. Elementary school.

a. State name and address of the nearest elementary school available to residents of the subdivision.

b. State the distance to the school in terms of road miles from the geographical center of the subdivision.

c. State whether school bus transportation will be provided.

d. State whether public transportation is available to the school.

2. Junior high school.

a. State name and address of the nearest junior high school available to residents of the subdivision.

b. State the distance to the school in terms of road miles from the geographical center of the subdivision.

c. State whether school bus transportation will be provided.

d. State whether public transportation is available to the school.

3. High school.

a. State name and address of the nearest high school available to residents of the subdivision.

b. State the distance to the school in terms of road miles from the geographical center of the subdivision.

c. State whether school bus transportation will be provided.

d. State whether public transportation is available to the school.

E. Medical and dental facilities.

1. Hospital facilities.

a. State the availability of hospital facilities and the name and address of the particular hospitals available to residents of the subdivision.

b. State whether the hospital is publicly or privately owned and whether the services are general or specialized.

c. State the bed capacity of the hospital.

d. State the distance in terms of road miles from the geographical center of the subdivision to the nearest general hospital.

e. State the availability of ambulance service and specify whether this service is furnished by the hospital(s) or by a volunteer organization.

2. Physicians and dentists.

a. State the distance in terms of road miles from the geographical center of the subdivision to physicians' and dentists' offices.

b. State whether or not public transportation is available from the subdivision to the general physicians' and densists' offices.

F. Public transportation.

1. State whether public transportation is available from the subdivision to nearby municipalities including the frequency, type and estimated cost of service.

2. If no such transportation is available, state whether it will be available and give estimated date of availability.

3. Include in your statement the proposed frequency of service and estimated cost.

4. If public transportation is not presently available from the subdivision, state the distance in road miles to nearest public transportation.

PART XI. TAXES AND ASSESSMENTS—COMMON FACILITIES

A. Is the buyer or lessee to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision before taking title or signing the lease? If so, state the amount and to whom they must be paid.

B. Is the buyer or lessee to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision after taking title? If so, state the amount and to whom they must be paid.

PART XII. OCCUPANCY STATUS

A. State the approximate number of dwellings in the subdivision at the time of filing.

B. State the number of dwellings which are proposed and the estimated completion date of those dwellings.

C. State the approximate number of dwellings presently occupied, if any.

PART XIII. SHOPPING FACILITIES

A. State what shopping facilities are available to the subdivision. Include available types of stores and consumer services and the distance in terms of road miles from the geographical center of the subdivision to the facilities.

B. State whether public transportation is available to the facility, the frequency of the service and the estimated cost.

PART XIV. FINANCIAL STATEMENT

A. Submit a copy of the latest financial statement of the developer. Such financial statement shall not be more than 12 months old.

B. State the means by which the developer will finance the obligations undertaken or proposed and as set forth in this statement of record. A statement of past performance in completing obligations undertaken by the developer may be included.

PART XV. AFFIRMATION

§ 1710.110 Property report and lease addendum.

The property report and if applicable, the lease addendum to be filed with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, as a part of the statement of record, and as provided in § 1710.20 shall be prepared in accordance with the instructions and format as follows:

INSTRUCTIONS FOR COMPLETING PROPERTY REPORT AND LEASE ADDENDUM

These instructions must be followed in completing the property report and lease addendum. All spaces must be completed. This format may not be changed in any respect, except as follows:

a. All references to leases, lessees and rents should be deleted if no leasing is proposed and the offering is exclusively for sales. In this event, the lease addendum may be disregarded.

b. Spaces provided in the format may be enlarged or extended for the purpose of providing a summary explanation of the subject under discussion but may not be used to insert promotional or advertising matter designed to counteract facts adverse to the interests of the buyer or lessee.

c. If this filing is made pursuant to the provisions of Section 1710.40 of these regulations, then the following paragraph shall be added as a new paragraph immediately after the fourth paragraph of the notice and disclaimer:

"Although a statement of record has been filed with the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, the filing has not been examined or verified."

d. Questions on the property report must be answered in concise, plain language but should disclose all pertinent facts.

e. The property report shall contain information in addition to that elicited by the questions appearing therein if at any time it appears to the Secretary that the inclusion of additional information is necessary or appropriate in the public interest, and the Secretary so advises the developer.

The instructions below correspond to the numbered paragraph in the property report:

Paragraph 3. List the nearest large city or county seat and the population of each. List the total distance to the center of the subdivision from each and the portion of that distance which is paved and unpaved. If the subdivision is located more than 50 miles from either, list also the nearest established community or communities.

Paragraph 4. If the buyer or lessee is exposed to the risk of losing his investment in the event of the developer's failure or bankruptcy, this fact must be made unmistakably clear in this paragraph. Explanations should include any measures designed to protect the buyer's interests, and they must disclose any circumstances under which the buyer would lose his investment either because of his own default or the developer's inability to perform under the sales contract. If there is any prohibition or penalty against the buyer recording the sales contract or lease, so state. A statement can be included by the developer describing his past performance in conveying free and clear titles to buyers upon their payment of the full purchase price.

Paragraph 5. Whether the offering includes only cash sales, or installment contracts and leases, explain fully how the buyer or lessee is to be protected against loss of his investment. If a blanket mortgage or other lien is foreclosed against the developer, will the holder of such mortgage or other lien be obligated to perform the agreement with the purchaser or lessee? If not, are the buyer's or lessee's payments and investments in improving the property protected through an escrow or by other means? The buyer or lessee must be told of the possible consequences in the explanation of the answer to this question.

Paragraph 7. Buyers and lessees must be told when their obligation to pay taxes, special assessments and similar charges begins. They should also be made aware of the approximate amount of buyer's or lessee's annual payments, but the items for indicating the amount of taxes and special assessments may be answered by the statement "Consult local taxing authorities."

Paragraph 8(b). Include all limitations upon the buyer's use or enjoyment of the property, including mineral rights reservations.

Paragraph 10. Describe arrangements made (contracts supported by completion bonds or escrows, for example) designed to assure completion of the improvements. If no arrangements have been made, state "None." If it later becomes evident that an improvement will not be completed on or before the specified date, amendments of the statement of record and property report are required. If no sewage disposal arrangements are contemplated, state if land is suitable for the use of septic tanks, describing the results of any percolation tests. State estimated cost to buyer for septic tank. If water is to be provided by private well, indicate (1) estimated completion cost and (2) any other data establishing that a sufficient quantity of potable water is available to each buyer or lessee. If water is to be provided by a private utility, describe assurances for continuous service at reasonable rates.

Paragraph 14. The number of homes occupied can be amended to reflect periodic increases subsequent to the initial filing date.

Paragraph 15. Include statement as to nature of terrain (flat, rolling, hilly, mountainous, etc.), type of soil (sandy, swampy, rocky, etc.) and vegetation (cactus, trees, grass, etc.).

PROPERTY REPORT

NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

This report is not a recommendation or endorsement of the offering herein by the Office of Interstate Land Sales Registration, nor has that office made an inspection of the property nor passed upon the accuracy or adequacy of this report or any promotional or advertising materials used by the seller.

It is in the interest of the buyer or lessee to inspect the property and carefully read all sale or lease documents.

Prospective buyers and lessees are notified that unless they have received this property report prior to, or at the same time they enter into a contract, they may void the contract by notice to the seller.

Unless a buyer or lessee acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract, he may revoke his contract within 48 hours from the signing of his contract, if he has received the property report less than 48 hours prior to signing such contract.

1. Name(s) of developer _____

Address _____

2. Name of subdivision _____
Location _____ County, State of _____

3. List names and populations of surrounding communities and list distances over paved and unpaved roads to the subdivision.

Name of community	Population	Distance over paved roads	Unpaved roads	Total
a.				
b.				
c.				
d.				
e.				

4. If periodic payments are to be made by a buyer (as in the case of installment sales contracts) complete all items under this paragraph 4. If not, enter "Not Applicable."

a. Will the sales contract be recordable? Yes or No?

b. In the absence of recording, could the developer's creditors or others acquire title to the property free of any obligation to deliver a deed to the buyer when final payment has been made under the sales contract? Yes or No? If yes, explain.

c. What provision, if any, has been made for refunds if buyer defaults?

d. State prepayment penalties or privileges, if any.

5. Is there a blanket mortgage or other lien on the subdivision or portion thereof in which the subject property is located? Yes or No? If yes, list below and describe arrangements, if any, for protecting interests of the buyer or lessee if the developer defaults in payment of the lien obligation. If there is such a blanket lien, describe arrangements for release to a buyer of individual lots when the full purchase price is paid.

(Type of lien)	(Effect on buyers if developer defaults)
a. _____	_____
b. _____	_____
c. _____	_____

6. Does the offering contemplate leases of the property in addition to, or as distinguished from, sales? Yes or No? If yes, a lease addendum must be completed, attached, and made a part of the property report.

7. Is buyer or lessee to pay taxes, special assessments, or to make payments of any kind for the maintenance of common facilities in the subdivision (a) before taking title or signing of lease or (b) after taking title or signing of lease? If either answer is yes, complete the schedule below:

	Approximate amount of buyer's or lessee's annual payments
Taxes	_____
Special assessments	_____
Payments to property owner's association	_____
Other	_____
Specify	_____

8. (a) Will buyer's downpayment and installment payments be placed in escrow or otherwise set aside? Yes or No? If yes, with whom? If not, will title be held in trust or in escrow?

(b) Except for those property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, will buyer receive a deed free of exceptions? Yes or No? If no, list all restrictions, easements, covenants, reservations and their effect upon buyer.

(c) Buyer should determine permissible uses of the property from local zoning authorities.

9. (a) List all recreational facilities currently available (e.g., television, sports, beaches, etc.) State any costs or assessments to buyer or lessee.

(b) If facilities are proposed or partly completed, state promised completion date, provisions to insure completion, and all estimated cost or assessments to buyer or lessee.

10. State whether the following are now available in the subdivision: Garbage and trash collection, sewage disposal, paved streets, electricity, gas, water, telephone. If yes, state any estimated costs to buyer or lessee. If proposed or partly completed, state promised completion date, provisions to insure completion and give estimate of all costs including maintenance costs to buyer or lessee.

11. Will the water supply be adequate to serve the anticipated population of the area?

12. Is any drainage of surface water, or use of fill necessary to make lots suitable for construction of a one story residential structure? Yes or No? If yes, state whether any provision has been made for drainage or fill and give estimate of any costs buyer would incur.

13. State whether any of the following are currently available in the subdivision: Schools; medical facilities (hospitals, doctors, dentists); shopping facilities. List availability of public transportation to, and distance of facility from geographical center of subdivision.

If facility is proposed or partly completed, state promised completion date and any provisions to insure completion.

14. Approximately how many homes were occupied as of _____ (insert date of filing)?

15. State elevation of the highest and lowest lots in the subdivision and briefly describe topography and physical characteristics of the property.

16. Will any subsurface improvement, or special foundation work be necessary to construct one story residential or commercial structures on the land? Yes or No? If yes, state if any provision has been made and estimate any costs buyer would incur.

17. Are all lots and common facilities legally accessible by public road or street? Yes or No? If not, explain.

18. Has land in the subdivision been platted of record? Yes or No? If not, has it been surveyed? Yes or No? If not, state estimated cost to buyer to obtain a survey.

19. Are lots staked or marked so that buyer can locate his lot(s)? Yes or No?

LEASE ADDENDUM

1. State term of lease.

2. Will the lease be recordable? Yes or No?

3. Is there any prohibition or penalty against the lessee for recording the lease? Yes or No? If yes, explain.

4. Can the owner's or developer's creditors or others acquire title to the property free of any obligation to continue the lease? Yes or No? Explain.

5. Describe whether rental payments are flat sums or graduated. Describe any provisions for increase of rental payments during the term of the lease.

6. Are there any provisions in lease prohibiting assignment and/or subletting? Yes or No? If yes, describe.

7. Summarize termination provisions in the lease.

8. Does the lease prohibit the lessee from mortgaging or otherwise encumbering the leasehold? Yes or No?

9. Will lessee be permitted to remove improvement when lease expires?

§ 1710.115 State property report disclaimer.

If the developer is filing with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, pursuant to § 1710.25, the following statement must be delivered to each purchaser simultaneously with the delivery of the State property report:

STATE PROPERTY REPORT DISCLAIMER

NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

This report is not a recommendation or endorsement of the offerings herein by the Office of Interstate Land Sales Registration, nor has that Office made an inspection of the property nor passed upon the accuracy or adequacy of this report or of any promotional or advertising materials used by the seller. Information contained herein has been filed with the State of _____ and the Office of Interstate Land Sales Registration.

It is in the interest of the buyer to inspect the lot and to read all contract documents before signing the contract to purchase or lease.

Prospective buyers and lessees are notified that unless they have received this property report prior to, or at the same time they enter into a contract, they may void the contract by notice to the seller.

Unless a buyer or lessee acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract, he may revoke his contract within 48 hours from signing his contract if he has received the property report less than 48 hours prior to signing such contract.

Although a statement of record has been filed with the Office of Interstate Land Sales Registration, the filing has not been examined or verified.

§ 1710.120 Statement of record—State filing.

If the developer is filing pursuant to § 1710.25, there shall be filed with the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, a statement as follows:

SECTION I. State Filings—The following information shall preface the State statement of record or similar instrument and shall be done in accordance with the general instructions set forth in § 1710.105 for Part I, Administrative Information, and Part III, Identity of Interest in More than one Filing, and shall be set forth in the following format. Statements of record shall be filed in duplicate and at least one copy shall be signed.

Employer's IRS number _____
Developer: _____
Owner: _____

STATEMENT OF RECORD

Name of subdivision: _____
Location: _____
State of filing: _____
Name of developer: _____
Developer's address: _____
Authorized agent: _____
Authorized agent's address: _____

ADMINISTRATIVE INFORMATION

A. Identification and filing information:
1. _____
2. _____
3. _____

B. General information:
1. _____
2. _____
3. _____
4. _____
5. _____
6. Acres owned _____
Acres under option or other similar arrangement _____
Total _____

C. Filings with State authorities:
1. _____
2. _____

IDENTITY OF INTEREST IN MORE THAN ONE FILING

Subdivision _____
Location _____
OILSR number_____
Date of filing_____

SEC. II. A. Submit all of the information, documentation, and certifications or affirmations submitted to the State.

B. If the State does not require the information and documentation required in Part II, C. of § 1710.105, submit such information and documentation.

C. The contract of sale or lease which will be executed by prospective purchasers or lessees must contain language (a) giving the purchaser the option to void the contract or agreement if he does not receive a property report prepared pursuant to the rules and regulations of the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, in advance of, or at the time of, his signing the contract or agreement, and (b) giving the purchaser the right to revoke the contract or agreement within 48 hours after signing the contract or agreement if he did not receive the property report at least 48 hours before signing the contract or agreement. (The contract or agreement may stipulate that the revocation authority shall not apply in the case of a purchaser who (1) has received the property report and inspected the lot to be purchased or leased in advance of signing the contract or agreement, and (2) acknowledges by his signature that he has made such inspection and has read and understood such report.)

D. Consolidation—Incorporation by Reference: If a filing is for an offering of lots to be sold pursuant to a common promotional plan and there has been an earlier filing with the OILSR for lots offered under the same promotional plan, the developer may incorporate by reference the information included in the earlier filing by identifying the earlier filing by OILSR filing number and reference to the appropriate sections, parts or pages thereof. This may be done for the purpose of meeting the requirements of the rules and regulations although the State law does not permit such consolidation.

The material incorporated by reference must be an exact copy of all material filed with the State.

SEC. III. *Affirmation.* I hereby affirm that I am the developer of the lots herein described or will be the developer at the time lots are offered for sale or lease to the public, or that I am the agent authorized by such developer to complete this statement (if agent, submit written authorization to act as agent);

That the statements contained in this statement of record and any supplement thereto, together with any documents submitted herewith, are full, true, complete and correct;

That I have complied with the land development and disclosure requirements of the State of _____ (state of filing):

That the material submitted is a true and accurate copy of the material filed with the State of _____; and

That the fees accompanying this application are in the amount required by the rules and regulations of the Office of Interstate Land Sales Registration.

(Date)	(Signature)
(Corporate seal if applicable)	(Title)

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (Title XIV of Public Law 90-448, 82 Stat. 590, enacted on Aug. 1, 1968) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact * * * shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both."

§ 1710.125 Partial statement of record—request for exemption.

Requests for an exemption advisory opinion, pursuant to § 1710.15(b) shall be prepared in accordance with the following instructions:

INSTRUCTIONS FOR COMPLETION OF PARTIAL STATEMENT OF RECORD—REQUEST FOR EXEMPTION

The developer may file Part I, Administrative Information, in the form set forth in § 1710.105 and the affirmation and agreement as set forth below as a partial statement of record.

The filing of this information does not preclude a developer from filing a complete statement of record. If the developer files the material necessary to complete the statement of record, the date of filing shall be the date the complete statement of record is received by the Secretary.

AFFIRMATION AND AGREEMENT

I hereby affirm that I am the developer of the lots herein described or will be the developer at the time the lots are offered for sale or lease to the public, or that I am the agent authorized by such developer to complete this statement (if agent, submit written authorization to act as agent);

That the statements contained in this partial statement of record and any supplement thereto, together with any documents submitted are full, true, complete, and correct;

That the fee accompanying this application are in the amount required by the regulations of the Office of Interstate Land Sales Registration;

That I agree that this filing is a partial statement of record and that the receipt of this filing by the Secretary shall not be the date of filing of a statement of record for the purpose of determining the effective date thereof; and

That if the Secretary advises that the offering is not exempt, I agree to file the remaining portions of the statement of record as set forth in § 1710.105 of these rules and regulations prior to any offering and that the date of the receipt of the complete statement of record by the Secretary shall be the date of filing for the purpose of determining the effective date of the statement of record.

(Date)	(Signature)
(Corporate seal if applicable)	(Title)

WARNING: Section 1418 of the Housing and Urban Development Act of 1968 (Title XIV of Public Law 90-448, 82 Stat. 590, enacted on Aug. 1, 1968) provides: "Any person who willfully violates any of the provisions of this title or of the rules and regulations or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact * * *, shall upon conviction be fined not more than $5,000 or imprisoned not more than 5 years, or both."

Chapter X—Federal Insurance Administration

Subchapter A—National Insurance Development Program

Part
1905 Statewide "FAIR" Plans.
1906 Standard reinsurance contract.
1907 State reimbursement requirement.

Subchapter B—National Flood Insurance Program

1909 General provisions.
1910 Criteria for land management and use.
1911 Insurance coverage and rates.
1912 Sale of insurance and adjustment of claims.
1913 Exemption from denial of Federal disaster benefits.
1914 Areas eligible for the sale of insurance.
1915 Identification of special hazard areas.

Subchapter C—Federal Crime Insurance Program

1930 Description of program and offer to agents.
1931 Purchase of insurance and adjustment of claims.
1932 Protective device requirements.
1933 Coverages, rates, and prescribed policy forms.
1934 Classification of territories.

SUBCHAPTER A—NATIONAL INSURANCE DEVELOPMENT PROGRAM

PART 1905—STATEWIDE "FAIR" PLANS

Sec.
1905.1 Definitions.
1905.2 Competition and supervision of FAIR Plan.
1905.3 Coverage and operation of the Plan.
1905.4 Insurer participation and placement program.
1905.5 Inspections and applications for insurance.
1905.6 Deemer or binder requirement.
1905.7 Placement action after inspection report.
1905.8 Prohibition of unnecessary reinspections.
1905.9 Notice of cancellation or nonrenewal.
1905.10 Impartial selection of adjusters.
1905.11 Coding and reports under the Plan.
1905.12 Inapplicability and waiver of regulations.

AUTHORITY: The provisions of this Part 1905 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 598; 12 U.S.C. 1749bbb-17.

§ 1905.1 Definitions.

As used in this part—

(a) "Act" means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb—1749 bbb-21), which authorized the program. Section references are to the National Housing Act;

(b) "Administrator" means the Federal Insurance Administrator within the Department of Housing and Urban Development, to whom the Secretary has delegated the administration of the program (34 F.R. 2680, Feb. 27, 1969);

(c) "Applicant" means any property owner, or his authorized representative, who duly requests essential property insurance for a risk eligible under a FAIR Plan;

(d) "Binder" means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(e) "Deemer provision" means a provision in a Plan whereby interim coverage for an eligible risk is deemed automatically to attach upon the expiration of a specified period of time after an application for inspection and insurance;

(f) "Eligible property," "eligible risk," or "risk eligible under the Plan" means any real property, personal property, or mixed real and personal property, potentially insurable under one or more lines of essential property insurance, subject to an inspection to ascertain insurability and applicable premium rates;

(g) "Environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner or tenant;

(h) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsement thereon, as approved by the State insurance authority, and insurance against the perils of vandalism and malicious mischief. Such insurance shall not include automobile insurance and shall not include insurance on such type of manufacturing risks as may be excluded by the State insurance authority;

(i) "FAIR Plan" or "Plan" means a statewide Plan to assure "fair access to insurance requirements" that is approved by the Administrator as meeting the criteria of Part A of the Act, including such modifications thereof as the Administrator may promulgate from time to time under this part in accordance with subsection 1214(b) of the Act (12 U.S.C. 1749bbb–6(b));

(j) "Inspection facility," with respect to any State, means any rating bureau or other person duly authorized and designated to perform inspections under a Plan;

(k) "Insurer" includes any property insurance company, or group of companies under common ownership or common management, authorized to engage in the insurance business under the laws of at least one State;

(l) "Participating insurer" means any insurer eligible for membership in a Plan and fully participating in that Plan. The term shall not include any insurer in any State in any year in which such insurer does not participate in the Plan on a risk-bearing or potentially risk-bearing basis;

(m) "Person" includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(n) "Placement facility" means the facility established under a Plan to place or provide essential property insurance to persons making application for one or more lines of such insurance under the Plan;

(o) "Pool" means any pool or association of insurance companies in any State that is formed, associated, or otherwise created for the purposes of sharing risks and of making property insurance more readily available;

(p) "Property owner" or "owner," with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(q) "Secretary" means the Secretary of Housing and Urban Development;

(r) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(s) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State;

(t) "Surcharge" means (1) any condition charge, and (2) any general or other charge added to the basic insurance rates or premium ordinarily applicable to the same class of property; but does not include specific rates that apply to all property in a Plan on the basis of actual self-rating experience;

(u) "Urban area" includes any municipality or other political subdivision of a State, subject to population or other limitations defined in rules and regulations of the Secretary, and such additional areas as may be designated by the State insurance authority; and

(v) "Year" means a calendar year; fiscal year of a company, association, or pool; reinsurance contract year; or such other period of 12 months as may be designated by the Administrator.

§ 1905.2 Composition and supervision of FAIR Plan.

(a) The Administrator will periodically review each State's FAIR Plan in its entirety for conformity to statutory criteria (12 U.S.C. 1749bbb–3—1749bbb–6) and this part. Although the number and location of the required elements in a Plan will vary according to the particular method and procedures used by the State, the required documentation comprising each Plan could include any or all of the following, as relevant:

(1) The State law, where one has been enacted;

(2) The industry agreement or program, if any;

(3) The approval action by the State insurance authority with respect to the industry agreement or program, or by court order or other approval authority, if applicable; and

(4) Implementing rules, regulations, and orders, together with operating procedures and forms.

(b) The Plan shall include a certification by the State insurance authority of the date on which the Plan was placed in effect and on which any amendments to the Plan are effective.

(c) The Plan shall evidence that it has been approved by, and is to be administered under the supervision of, the State insurance authority.

(d) The Plan shall provide for a continuing public education program by participating insurers, agents, and brokers, in order to assure that the Plan receives adequate public attention. For example, a brochure or other publication should be made widely available for distribution through all agents, brokers, and other producers. All participating insurers, agents, and brokers should include such a publication with each notice of cancellation or nonrenewal in order to provide policyholders with the required information concerning the placement of insurance under the Plan.

§ 1905.3 Coverage and operation of the Plan.

(a) At a minimum, the Plan shall provide for insurance against direct loss to property as defined and limited in standard fire policies and in (1) extended coverage, and (2) vandalism and malicious mischief endorsements thereon, as approved by the State insurance authority. It shall not include automobile insurance nor such types of manufacturing risks as may be excluded by the State insurance authority. The Plan shall specifically provide for insurance against direct loss to property that is being constructed or rehabilitated (including builder's risk coverage). To avoid the need for amendment to the Plan and delays in securing new approval action, the Plan should provide for the inclusion of such additional lines of property insurance as from time to time may be designated essential by the Administrator pursuant to section 1203(a)(2) of the Act, 12 U.S.C. 1749bbb–2(a)(2).

(b) The Plan shall specify its geographic area of coverage. If the entire State is not designated as the area of coverage, the Plan must specify—by name, by population size, or by class—the political subdivisions and other areas eligible under the Plan. The area of coverage may not be limited to communities that have a blighted or deteriorating area or an area approved by the Secretary for an urban renewal project.

(c) Each State insurance authority under whose jurisdiction a Plan has been put into operation shall keep the Administrator fully and currently informed of any modifications or changes in the organization or operation of the Plan in his State, whether or not such changes directly affect the availability of coverage under the Plan.

§ 1905.4 Insurer participation and placement program.

(a) The Plan's placement program may take any of a variety of forms; for example, it may involve a syndicated or direct writing pool, an assigned risk facility, a reinsurance pool or association, or combinations of the foregoing.

(b) The Plan shall not discriminate against, shall provide for full cooperation with, and shall seek cooperation from all agents and brokers licensed to write property lines in the State. The inclusion of agents and brokers on FAIR Plan governing boards is encouraged.

(c) The Plan shall include one or more all-industry placement facilities, doing business with every insurer participating in the Plan, to perform the following functions for properties meeting reasonable underwriting standards:

(1) Upon request by or on behalf of a property owner requesting an inspection under the Plan, distribute the placement or risks equitably among the insurers with which it does business; and

(2) Place insurance up to the full insurable value of the risk to be insured with one or more insurers with which it is doing business, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability. In the case of very large risks not accommodated by the Plan (e.g., those whose full insurable value exceeds $1,500,000), the Plan shall provide that the placement facility shall assist in seeking to place the excess portion.

(d) As soon after May 1 of each year as practicable, each State insurance authority under whose jurisdiction a Plan has been put into operation shall notify the Administrator of the names of all insurers that are fully participating (on a risk-bearing basis) in the FAIR Plan of such State on that date in accordance with the conditions of the Standard Reinsurance Contract in effect at that time. For a Plan in which participation by insurers is voluntary, the notification shall include an estimate by the authority of the aggregate premium volume of essential property insurance written by participating insurers in relation to the total premium volume in such lines written by all property insurers in the State.

(e) Federal riot reinsurance will be offered only to those insurers that (1) have direct writings in one or more lines of essential property insurance and (2) are actually or potentially risk-bearing members of any pool organized under the Plan, as certified by the State insurance authority.

§ 1905.5 Inspections and applications for insurance.

(a) The Plan shall designate one or more inspection facilities, which may also operate as placement facilities if desirable.

(b) The Plan shall make its inspection and placement facilities readily available and accessible to the general public by providing a central source of information on the services it provides and on the manner of application. To assure the public's access to such information, the telephone information number of the Plan shall be listed alphabetically as "FAIR Plan" (1) in the white sections and (2) under "Insurance" in the classified sections of the telephone directories of each city where these facilities maintain an office.

(c) The Plan shall require that there will be an inspection of any eligible risk that is submitted to a placement facility or to a servicing insurer if such facility or insurer is unwilling to write coverage at regular rates. The Plan may not require as a precondition for obtaining an inspection that the property owner make a showing or certification that he has been unable to obtain insurance in the regular market.

(d) The Plan shall provide that inspections may be requested by the property owner or his authorized representative, the insurer, or the insurance agent, broker, or other producer. The Plan shall also provide that the request for an inspection need not be in writing, although it can provide for the transcribing of the pertinent information on a form.

(e) An inspection under the Plan shall be without cost to the property owner. Payment of a deposit premium may not be required as a precondition to inspection. However, the Plan may allow a property owner, at his option, to pay a deposit or provisional premium at the time of application, rather than at the time insurance under a deemer or binder provision becomes effective.

(f) The Plan may not require the presence of the owner of the building for a tenant to obtain an inspection, but the inspection facility must be provided access to the relevant portions of the building in which the property to be insured is located.

§ 1905.6 Deemer or binder requirement.

(a) Each Plan shall contain either a deemer or a binder provision in order to prevent lapses of insurance coverage for risks eligible under the Plan before coverage has been provided or declined under the Plan. A Plan may contain both a deemer and a binder provision.

(b) Plans adopting a deemer provision shall provide that eligible risks are automatically deemed insured if, (1) through no fault of the applicant, coverage has not been either offered or denied within 20 calendar days after the date the request for inspection was received, and (2) the applicant, at the time of requesting the inspection or at any time prior to the receipt of an inspection report indicating that the property is uninsurable, pays either the estimated annual premium or the portion thereof that is appropriate for the period of time for which the coverage is provided. The period of coverage provided under any such deemer provision shall not be less than the time required to complete the inspection and to process fully in the ordinary course of business any related application for insurance of the property submitted either directly to the placement facility or first to a designated insurer and thereafter to the placement facility if necessary.

(c) Plans adopting a binder provision shall provide that an applicant may apply for and obtain temporary coverage for a risk eligible under the Plan upon payment of a provisional premium at the time of requesting the inspection. The Plan, at its option, may also provide that coverage under the binder shall be extended for a sufficient period of time, after receipt of an unfavorable inspection report, to enable the applicant to bring the property up to insurable standards, but during the period of such rehabilitation reasonable condition surcharges may be added to the normal premium rates otherwise applicable to such property.

(d) Coverage provided under the deemer or binder provisions of the Plan shall be at the normal rates for the class of property to be insured, exclusive of any surcharge, but shall be subject to an appropriate premium adjustment, if necessary, after the property has been inspected.

(e) It is expected that no policyholder will be without coverage following a cancellation or nonrenewal under the Plan or otherwise, due solely to delays in inspecting and placing the risk under the Plan, and the Plan shall set forth the manner in which the objective of maximum possible continuity of coverage is to be accomplished. Binding coverage immediately, subject to inspection, would accomplish this and is encouraged.

§ 1905.7 Placement action after inspection report.

(a) The placement facility or insurer to which a risk is referred by the inspection facility shall complete an action report and promptly notify the applicant of the following:

(1) The amount of coverage that it agrees to write; and, if the coverage is with a surcharge, the amount of such surcharges and the improvements needed for coverage at a lower surcharged rate and at an unsurcharged rate;

(2) The amount of coverage it agrees to write if specified improvements are made; or

(3) That it declines to write the coverage because the property does not meet reasonable underwriting standards, in which case it will also state the specific information from the inspection report and other sources that constitutes the basis for this determination.

(b) No surcharge shall be made on any risk unless it is based upon an appropriate, objective, and identifiable physical condition of the property, as disclosed by an inspection and specified in an inspection report, and no surcharge shall be made on the basis of environmental hazards.

(c) Reasonable underwriting standards for declination of risks must be relevant to the perils against which insurance is sought. For example, they may include:

(1) Physical condition of the property; however, the mere fact that a property does not satisfy all current building code specifications would not, in itself, suffice;

(2) The property's present use, such as extended vacancy (other than for rehabilitation purposes) or the improper storage of flammable materials; or

(3) Other specific characteristics of ownership, condition, occupancy, or maintenance that are violative of law or public policy and that result in a substantially increased exposure to loss.

(d) In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or that the coverage will be written on condition that the property be improved, the

insurer or placement facility shall promptly send copies of the inspection and action reports to the applicant, advising him of the appeal procedures available, including rights of appeal to the State insurance authority under applicable State law. Appeal procedures within the Plan shall provide for prompt handling.

§ 1905.8 Prohibition of unnecessary reinspections.

In order to avoid unduly increasing the costs of the program, no Plan shall require the annual or routine reinspection of eligible risks for which coverage has been previously obtained under the Plan. Once an eligible risk has been inspected and found insurable, the Plan may require its reinspection only (a) upon request of the property owner, (b) on a limited basis for statistical purposes, (c) upon change in type of occupancy, (d) upon a reasonable periodic schedule of not more often than once every 3 years, or (e) for cause, upon information or well-founded belief that the occupancy hazards or physical condition of the property have substantially changed since the last inspection.

§ 1905.9 Notice of cancellation or nonrenewal.

(a) Except in cases of owner or occupant incendiarism, material misrepresentation, or nonpayment of premium, each Plan shall require its participating insurers to give, and each such insurer shall give, property owners no less than 30 days prior written notice of any cancellation or nonrenewal of coverage initiated by the insurer with respect to any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the affected property owner sufficient time to apply for an inspection and to obtain coverage under the Plan if necessary.

(b) For the purposes of this § 1905.9, the term cancellation or nonrenewal shall include (1) reductions in amounts of insurance and adverse modifications in coverage initiated by the insurer with respect to any owner individually, and (2) refusals by the insurer or its agents to renew any expiring coverage in any line of essential property insurance previously provided to the property owner.

§ 1905.10 Impartial selection of adjusters.

(a) No Plan or placement facility shall discriminate by providing for the primary use of services or any preferential treatment of any adjuster to the exclusion, detriment, or disadvantage of any other adjuster of equal or equivalent professional qualifications in any formal or informal arrangements made or promulgated for the adjustment of any insured losses under policies or contracts of insurance issued under the Plan.

(b) This § 1905.10 shall not be construed to prohibit (1) the use by servicing insurers of their adjusting staffs, (2) the impartial appointment of a supervisory adjuster with respect to any individual loss directly insured by three or more insurers, or (3) the obtaining of qualified loss adjusters at the lowest admnistrative cost for a reasonable period of time by FAIR Plans through the adoption of an impartial and periodic public bidding procedure.

§ 1905.11 Coding and reports under the Plan.

(a) The Plan shall provide for the separate coding of policies written pursuant to the Plan.

(b) The Plan shall provide for the submitting to the State insurance authority and the Administrator of periodic reports setting forth the number of requests for inspection, the number of risks inspected, and the results of referrals by the facility, including by individual insurer the number of risks accepted, the number of risks conditionally accepted and reinspections made, the number of risks declined, and such other information as the State insurance authority or the Administrator may from time to time require.

(c) Not later than 90 days after the close of its fiscal year, each placement facility under the Plan shall furnish to the Administrator a comprehensive report on its operations during the year, which at the minimum shall include such information for the year as may be called for on Form HUD–1603, Quarterly State FAIR Plan Report. The first such report shall include copies of all previously published annual and interim reports not already furnished to the Administrator. Subsequent reports shall include any additional printed or published report under the Plan.

(d) For periods beginning on and after January 1, 1970, each placement facility under the Plan shall also provide the Administrator with quarter-annual reports of its current operations on Form HUD–1603, which the Administrator shall furnish to the facility. Such reports shall be due not later than 90 days after the end of each quarter. With respect to any previous quarter for which the reports required by this paragraph have not already been furnished, reports shall be due not later than 90 days after the effective date of this § 1905.11.

§ 1905.12 Inapplicability and waiver of regulations.

(a) Notwithstanding the provisions of § 1905.3(a)(2), no Plan shall be required to offer vandalism and malicious mischief coverage in any State where by September 1, 1970, the State insurance authority certifies that the availability of such coverage in the normal market is adequate to meet the demand for such coverage, and that such adequate market availability also extends to properties that obtain fire and extended coverage under the Plan.

(b) Notwithstanding its effective date, the application of any requirement imposed by this part to any existing Federally approved statewide FAIR Plan shall automatically be deferred until the close of the first full regular session of the State legislative body following such effective date in any State where the implementation of such requirement is certified by the State insurance authority by September 1, 1970, to be inconsistent with or unauthorized by an applicable State statute in force on such effective date.

(c) In addition to the specific waiver authorized by paragraph (a), the Administrator may waive compliance with any other requirement of this part with respect to any State, temporarily or indefinitely, and in whole or in part, if the State insurance authority certifies that compliance is unnecessary or inadvisable under local conditions or State law and the Administrator concurs in such certification.

PART 1906—STANDARD REINSURANCE CONTRACT

Sec.

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AUTHORITY: The provisions of this Part 1906 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C.3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

§ 1906.20 Statement of applicable law.

Title XII of the National Housing Act (hereinafter referred to as the Act), added by the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb—1749bbb–21, provides for a National Insurance Development Program. Pursuant to this title, the Secretary of Housing and Urban Development is authorized to offer to any insurer reinsurance against losses resulting from riots or civil disorders, in all standard lines of property insurance enumerated under subparagraphs (A) through (E) of section 1203(a)(13) of the Act taken together, and, with respect to any State in which such reinsurance is purchased, to offer reinsurance individually on the standard lines of property insurance enumerated under subparagraphs (F) through (J) of said section. Principal eligibility requirements under the Act for such reinsurance are set forth in § 1906.35.

§ 1906.21 Definitions.

As used in this part:

(a) "Aggregate losses" means the sum total of losses resulting from riots or civil disorders occurring in a State and allocable to a State in which reinsurance is provided;

(b) "Civil disorder" means:

(1) Any pattern of unlawful incidents taking place within close proximity as to time and place and involving property damage intentionally caused by persons apparently having civil disruption,

civil disobedience, or civil protest as a primary motivation, at least two of which incidents result in property damage in excess of $1,000 each; or

(2) Any occurrence of property damage in excess of $2,000 caused by persons whose unlawful conduct in causing the occurrence clearly manifests their primary purpose of civil disruption, civil disobedence, or civil protest;

(c) "Company" means any company authorized to engage in the insurance business under the laws of any State, except that if there are two or more companies within a State in which reinsurance is to be provided under the contract which as determined by the reinsurer:

(1) Are under common ownership and ordinarily operate on a group basis; or

(2) Are under single management direction; or

(3) Are otherwise determined by the reinsurer to have substantially common or interrelated ownership, direction, management, or control; then all such related, associated, or affiliated companies, excluding nonadmitted companies which are not specifically included by endorsement to the contract, shall be reinsured only as one aggregate entity;

(d) "Continuing organization, pool, or association of insurers" means an industry pool created to provide direct insurance to meet special problems of insurability, such as for a particular class or type of business;

(e) "Contract" means the Standard Reinsurance Contract;

(f) "Direct premiums earned" means direct premiums earned as reported in column 2 on page 14 of the company's Fire and Casualty Annual Statement for the specified calendar year, in the form adopted by the National Association of Insurance Commissioners, subject to (1) adjustment as approved by the reinsurer for cessions to pools, facilities, and associations, and for the inclusion of participations in such pools, facilities, and associations, and (2) such other appropriate adjustments as may be approved or required by the reinsurer, which shall include adjustments for dividends paid or credited to policyholders and reported in column 3 on page 14, subject to a maximum credit of 20 per centum of direct premiums earned for any one line of insurance;

(g) "Excess aggregate losses" means that part of aggregate losses which is equal to the sum of—

(1) 90 percent of the company's aggregate losses in excess of its net retention until the company's 10-percent share of aggregate losses under this subparagraph (1) equals the amount of its net retention;

(2) 95 percent of the company's remaining aggregate losses (after deducting the reinsurer's share of aggregate losses under subparagraph (1) of this paragraph in excess of twice its net retention, until the company's 5-percent share of aggregate losses under this subparagraph (2) equals the amount of its net retention; and

(3) 98 percent of the company's remaining aggregate losses (after deducting the reinsurer's share of aggregate losses under subparagraphs (1) and (2) of this paragraph) in excess of an amount equal to three times its net retention;

(h) "Losses" means all claims proved, approved, and paid by the company under reinsured policies, resulting from riots or civil disorders occurring in a State during the period of the contract, after making proper deduction for salvage and for recoveries other than reinsurance, together with an allowance for expense in connection therewith, hereby agreed to equal an amount per claim of eight per centum (8%) of the first $25,000 of any such claim, plus three per centum (3%) of the amount by which such claim exceeds $25,000 but is less than $100,000, plus one per centum (1%) of the amount by which the claim exceeds $100,000;

(i) "Net retention" means the amount of aggregate losses that the company must stand before the reinsurer's liability attaches under the contract and shall be one aggregate figure for each State which shall be the larger of either $1,000 or the amount determined by applying a factor of two and one-half per centum (2½%) to the specified percentage of the company's direct premiums earned in the State for the calendar year 1971 on those lines of insurance reinsured;

(j) "Property owner" means any individual or group of individuals, corporation, partnership, or association, or any other organized groups of persons having an insurable interest in any real, personal, or mixed real and personal property;

(k) "Reinsurer" means the Federal Insurance Administrator;

(l) "Riot" means any tumultuous disturbance of the public peace by three or more persons mutually assisting one another, or otherwise acting in concert, in the execution of a common purpose by the unlawful use of force and violence resulting in property damage of any kind;

(m) "Specified percentage" means one hundred per centum (100%) of the direct premiums earned for each line of insurance reinsured under the contract, except that the specified percentage of Homeowners multiple peril shall be eighty-five per centum (85%) and that of Commercial multiple peril shall be sixty-five per centum (65%);

(n) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands; and

(o) "State pool" means any State pool or other facility required under State law or approved by the State insurance authority which is formed, associated, or otherwise created as part of a statewide plan for the purpose of making property insurance more readily available.

§ 1906.22 Offer to provide reinsurance.

Pursuant to the provisions of the Urban Property Protection and Reinsurance Act of 1968, and subject to the terms and conditions set forth in this part, the reinsurer offers to enter into a contract to pay, as reinsurance of the company, the amount of the company's excess aggregate losses resulting from riots or civil disorders in such lines of mandatory and optional coverage as may be designated by the company separately for each State.

§ 1906.23 Effective date of offer.

The reinsurer's offer to provide reinsurance under the terms and conditions set forth in this part is effective at the time this document is filed for public inspection at the Office of the Federal Register.

§ 1906.24 Acceptance of offer.

(a) Acceptance of this offer shall be by telegraphed or mailed notice of acceptance to the reinsurer. The date of dispatch of this notice of acceptance, which date should be no later than 12 p.m., e.s.t., April 30, 1971, must be clearly shown either by telegraph dispatch notation or postmark.

(b) The telegram or letter accepting this offer of reinsurance must indicate the States in which reinsurance on lines of mandatory coverage is to be provided and must specifically designate for each such State the lines of optional coverage for which reinsurance is to be provided. This notice of acceptance shall be in substantially the following form:

> The [name of insurer or insurers] hereby accepts the offer as filed with the Office of the Federal Register of a Standard Reinsurance Contract pursuant to the Urban Property Protection and Reinsurance Act of 1968 for the mandatory and [specify] optional lines in the following States: [specify].

(c) Any company accepting this offer of reinsurance in accordance with paragraphs (a) and (b) of this section shall be supplied copies of the Standard Reinsurance Contract, Form HUD–1601, for execution and return to the reinsurer.

§ 1906.25 Policies reinsured.

(a) Reinsurance, under a Standard Reinsurance Contract provided pursuant to this offer, shall apply to:

(1) All policies or contracts of direct property insurance issued by the company to any property owner, except for policies for which the business is handled for or through any State pool or any other continuing organization, pool, or association of insurers, and

(2) The company's participations in State pools and, as may be approved by the reinsurer, in other continuing organizations, pools, or associations of insurers,

which policies, contracts, or participations are in force on the effective date of the contract or which commence or are renewed on or after such effective date in all the mandatory and in such optional standard lines of property insurance listed under paragraphs (b) and (c) of this section as may be designated separately for each State.

(b) The lines of mandatory coverage are:
(1) Fire and extended coverage;
(2) Vandalism and malicious mischief;
(3) other allied lines of fire insurance;
(4) Burglary and theft; and
(5) Those portions of multiple peril policies covering similar perils to those provided in subparagraphs (1), (2), (3), and (4) of this paragraph.
(c) The lines of optional coverage are:
(1) Inland marine;
(2) Glass;
(3) Boiler and machinery;
(4) Ocean marine; and
(5) Aircraft physical damage.

§ 1906.26 Premiums.

(a) The aggregate basic premium due the reinsurer for the reinsurance coverage provided under the contract shall be computed by applying an annual rate of fifteen hundredths of one per centum (0.15%) to an aggregate premium base consisting of the sum of the products of the company's direct premiums earned in each State in each reinsured line for the calendar year 1971 multiplied by the specified percentage of such earned premiums, as defined in § 1906.21 (f) and (m).

(b) An advance premium, which shall be an estimated premium only, shall be computed by the company on the basis of its direct premiums earned in the calendar year 1970 in the manner required for the computation of the aggregate basic premium. If any line of insurance is added during the term of the contract for which the company had no premium writings in 1970, the premium base for the advance premium shall be estimated by State for the period from the date of attachment of coverage to the expiration date of the contract. The aggregate advance premium shall be paid to the reinsurer without demand within 30 days from the effective date of coverage. Interest shall accrue at six per centum (6% per annum on any portion of the advance premium which is not paid on or before 30 days from its due date. The actual amount of the aggregate basic premium shall subsequently be computed and adjusted in accordance with the provisions of this § 1906.26 and § 1906.31.

(c) If at any time the total amount of excess aggregate losses incurred by the reinsurer under the contract and all like Standard Reinsurance Contracts issued during the period between May 1, 1971, and April 30, 1972, exceeds the total net amount of all advance premiums collected by the reinsurer during the same period under all such contracts, the company shall be obligated to pay to the reinsurer as an additional premium an amount equal to ten hundredths of one per centum (0.10%) of its aggregate premium base as defined above. Such additional premium shall be payable within 30 days after the demand of the reinsurer, either as an additional advance premium estimated on the basis of direct premiums earned for the year 1970 (and subject to adjustment in accordance with § 1906.31) or subsequent to adjustment, whichever the reinsurer may determine to be appropriate.

(d) The aggregate basic premium, together with any additional premium which may be due the reinsurer in accordance with the preceding paragraph, shall constitute the minimum reinsurance premium payable for coverage under the contract; and such reinsurance premium shall be deemed fully earned on the date that such reinsurance coverage attaches, except as otherwise provided in § 1906.30.

§ 1906.27 Assessments.

If any other company (or companies) reinsured by the reinsurer under a like Standard Reinsurance Contract incurs aggregate losses in reinsured lines in any State during the period of the contract, which in total exceed its net retention for all such lines, and as a result lodges claims against the reinsurer, then the company, on demand of the reinsurer, shall pay to the reinsurer an assessment sufficient to meet the company's equitable share of all such excess aggregate losses incurred in the State, but only to the extent that such losses exceed the unused net amount of all reinsurance premiums paid or payable by all reinsured companies into the National Insurance Development Fund for the period from August 1, 1968, through April 30, 1972 (including interest earned thereon), for reinsurance in such State. Such share shall be in the proportion that—

(a) The amount, if any, by which the company's net retention in lines reinsured under the contract in such State exceeds the company's aggregate losses in such lines, bears to

(b) The aggregate amount of unabsorbed net retention for all the lines of insurance of all companies reinsured under the contract in such State,

but such share shall not exceed the amount of the company's unabsorbed net retention under paragraph (a) of this section. An assessment will be required only after the termination of coverage provided by the contract.

§ 1906.28 Claims.

(a) The company shall advise the reinsurer by letter (1) of all losses from a single occurrence which exceed $50,000 and (2) whenever it appears that aggregate losses have been incurred in an amount equal to ninety per centum (90%) of the company's net retention in any State, on the basis of its direct premiums earned and reported to the reinsurer for the calendar year 1970.

(b) When the company incurs aggregate losses which exceed its net retention in any State, the company may make claim upon the reinsurer for the payment of excess aggregate losses in that State by filing a certification of loss and thereafter such supporting documentation of such losses as may be required by the reinsurer, and following the receipt of such certifications and documentation the reinsurer shall, as promptly as possible, in such installments and on such conditions as may be determined by the reinsurer to be appropriate (including advance payments made on the basis of preliminary certifications of loss filed in advance of the final determination of the ultimate amount of losses paid), pay to the company the amount of such excess aggregate losses subject to adjustments on account of underpayments or overpayments.

(c) If the ultimate amount of losses to be paid by the company has not been finally determined when the certification of loss is filed, the company shall, in due course, file one or more supplementary certifications of loss and thereafter the reinsurer or the company, as the case may be, shall pay the balance due.

(d) Claims paid pursuant to computations of net retentions based upon the direct premiums earned for the calendar year 1970 shall be recomputed and adjusted at the termination of the coverage provided by the contract on the basis of direct premiums earned in reinsured lines for the calendar year 1971.

§ 1906.29 Inception and expiration dates.

(a) Provided the company has requested reinsurance by States and lines of coverage on or before April 30, 1971, the Standard Reinsurance Contract shall be in effect from 12:01 a.m., e.s.t., on May 1, 1971, and shall expire at 12 p.m. (midnight), e.s.t., on April 30, 1972, unless sooner terminated.

(b) If the company applies for coverage on or after May 1, 1971, the contract shall be effective from 12:01 a.m., e.s.t., on the day after such application is dispatched, as determined by the date of postmark or telegram, provided the company requests coverage by State and line and otherwise complies with the eligibility requirements of the contract.

(c) The contract applies only to losses occurring during the term of the contract as follows:

(1) If at the inception of the contract any riot or civil disorder is in progress, no coverage shall be provided for losses resulting therefrom unless the contract is a continuation of coverage from the previous year's contract.

(2) If the contract terminates while a riot or civil disorder is in progress, no coverage shall be provided for any losses resulting therefrom which occur after the date and time of termination of the contract.

§ 1906.30 Cancellations.

(a) Reinsurance under the contract may be canceled by the company in its entirety or with respect to any State upon written notice by the company to the reinsurer stating that it desires to cancel the reinsurance coverage specified and that it will pay any premium due the reinsurer in accordance with the provisions of the contract, subject to any adjustments which may be required under § 1906.31: *Provided, however,* That no coverage shall attach under the contract if the company has willfully concealed or misrepresented any material fact with respect thereto.

(b) Reinsurance under the contract may be canceled by the reinsurer in its entirety or with respect to any State

upon 30 days written notice to the company of such cancellation, stating the reasons for cancellation, which shall be limited to one or more of the following grounds: Fraud or misrepresentation subsequent to the inception of the contract, nonpayment of premium or any other amount due the reinsurer, and the grounds set forth in paragraph (b) of § 1906.36.

(c) Whenever the reinsurer determines, in his discretion, that any cancellation of reinsurance is involuntary and without fault on the part of the company, the premium due the reinsurer for the coverage afforded under the contract shall be prorated in the ratio of—

(1) The number of days for which coverage was provided prior to the cancellation of such coverage plus 30, to

(2) The total number of days of coverage provided under the contract from the inception of such coverage up to and including April 30, 1972.

(d) In the event of any cancellation of reinsurance coverage under this § 1906.30, the net retention and assessment of such company shall be computed, without proration, on the basis of the direct premiums earned for the calendar year 1971. Refunds of premiums, if any, due the company upon cancellation may, at the discretion of the reinsurer, be deferred until after final adjustments have been made in accordance with the provisions of § 1906.31.

§ 1906.31 Adjustments.

(a) The company shall report to the reinsurer within 60 days after request its direct premiums earned for the calendar year 1971 in all reinsured lines in all States for which reinsurance was provided under the contract, for the purpose of computing and adjusting the reinsurance premium due to the reinsurer with respect to the coverage provided. The direct premiums earned to be reported for any line of insurance added during the contract term for any State in which the company had no premium writings in such line in 1971 shall be the direct premiums earned for the first 4 months of 1972 as estimated by the company, subject to audit by the reinsurer.

(b) In no event shall the adjusted amount of direct premiums earned by the company result in a basic premium to the reinsurer in an amount less than $25 for each State during the contract year, which shall constitute the minimum adjusted reinsurance premium for any State under the contract.

(c) On or before July 31, 1972, or such later date as may be permitted at the option of the reinsurer, the company shall report to the reinsurer its aggregate losses, for the purpose of computing and adjusting excess aggregate losses and assessments.

(d) Any overpayment or underpayment between the reinsurer and the company shall be adjusted and paid in accordance with the obligations assumed under the contract.

§ 1906.32 Insolvency.

(a) In the event of insolvency of the company the reinsurance under the contract shall be payable by the reinsurer to the company or to its liquidator, receiver, or statutory successor on the basis of the liability of the company under all policies, contracts, or participation shares reinsured without diminution because of the insolvency of the company.

(b) It is further agreed that the liquidator, or receiver, or statutory successor of the company shall give written notice to the reinsurer of the pendency of any claim against the company on the policies, contracts, or participation shares reinsured within a reasonable time after such claim is filed in the insolvency proceeding, and that during the pendency of such claim the reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which may be deemed available to the company or its liquidator, receiver, or statutory successor. The expense thus incurred by the reinsurer shall be chargeable, subject to court approval, against the company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the company solely as a result of the defense undertaken by the reinsurer.

§ 1906.33 Errors and omissions.

Inadvertent delays, errors, or omissions made in connection with any transaction under the contract shall not relieve either party from any liability which would have attached had such delay, error, or omission not occurred, provided always that such delay, error, or omission is rectified as soon as possible after discovery.

§ 1906.34 Restriction of benefits.

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

§ 1906.35 Participation in statewide plans.

(a) No reinsurance shall be offered or effective under the contract in any State unless there is in effect in such State, on the date coverage commences, a continuing statewide plan to make essential property insurance more widely available, and the company is fully participating in such plan on a risk-bearing basis and is certified by the State insurance authority as meeting the requirements of this § 1906.35. Except with respect to its runoff business after ceasing to do business within a State, the company shall not be eligible for reinsurance under the contract in any State in which it is not engaged in the direct writing of property insurance at the time coverage is requested, or in which it is writing business on a nonadmitted basis, unless it reports such nonadmitted business to the State insurance authority and participates in the statewide plan of such State on the basis of such reported business. The company shall file and maintain with the State insurance authority in each State in which it is participating in the statewide plan a statement pledging its full participation and cooperation in carrying out the plan and shall file a copy of each such statement with the reinsurer. The company shall not direct any agent, broker, or other producer not to solicit business through such plans and shall not penalize in any way any agent, broker, or other producer for submitting applications for insurance under such plans. The company shall also establish and carry out an education and public information program to encourage agents, brokers, and other producers to utilize the programs and facilities available under such statewide plans.

(b) In the event that the company after the inception of the contract voluntarily withdraws from any State plan, pool, or other facility required by the provisions of this section, such withdrawal shall be deemed to constitute cancellation by the company with respect to that State as of the effective date of the withdrawal.

§ 1906.36 Limitations on reinsurance.

(a) Reinsurance hereunder shall not be applicable to insurance policies subsequently written in a State by the company after the close of the second full regular session of the appropriate State legislative body following August 1, 1968, if the State has not enacted legislation to reimburse the reinsurer, as necessary, for the portion of the aggregate losses specified in section 1223(a)(1) of the National Housing Act (12 U.S.C. 1749 bbb–9(a)), paid by the reinsurer under the contract.

(b) The reinsurer shall cancel coverage, in accordance with the provisions of the contract, with respect to any State in which—

(1) The reinsurer has found (after consultation with the State insurance authority) that (i) it is necessary to have a suitable program adopted, in addition to required statewide plans, to make essential property insurance available without regard to environmental hazards and that such a program has not been adopted, or (ii) the company is not fully participating in the statewide plan; and, where it exists, in a State pool or other facility; and, where it exists, in any other program found necessary to make essential property insurance more readily available in the State; or

(2) Following a merger, acquisition, consolidation, or reorganization involving the company and one or more insurers with or without such reinsurance, the surviving insurer does not meet all criteria of eligibility for reinsurance and within 10 days pay any reinsurance premiums due; or

(3) The reinsurer has found (after consultation with the State insurance

authority) that a statewide plan is not complying with the reinsurer's statutory or regulatory criteria or has become inoperative.

(c) Notwithstanding the foregoing provisions, reinsurance may at the election of the company be continued, up to and including April 30, 1972, for the term of such policies and contracts reinsured prior to the date of termination of reinsurance under this § 1906.36, provided the company pays the reinsurance premiums in such amounts as may be required. For the purposes of this § 1906.36, the renewal, extension, modification, or other change in a policy or contract for which any additional premium is charged, shall be deemed to be a policy or contract written on the date such change was made.

(d) Reinsurance under the contract shall be subject to all of the provisions of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb–1749bbb–21, and to all regulations duly promulgated by the reinsurer pursuant thereto prior to the inception of any particular coverage provided under the contract.

§ 1906.37 Arbitration.

(a) If any misunderstanding or dispute arises between the company and the reinsurer with reference to the amount of premium due, the amount of loss, or to any other factual issue under any provision of the contract, other than as to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by the reinsurer. The company and the reinsurer may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make his determination. If the company and the reinsurer cannot agree on the appointment of an arbitrator, than two arbitrators shall be appointed, one to be chosen by the company and one by the reinsurer.

(b) The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the reinsurer. The company and the reinsurer shall bear equally all expenses of the arbitration.

(c) Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this § 1906.37, shall, upon objection by the reinsurer or the company, be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

§ 1906.38 Access to books and records.

The reinsurer and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books documents, papers, and records of the company that are pertinent to the business reinsured under the contract. Such audits shall be conducted to the maximum extent feasible in cooperation with the State insurance authorities and through the use of their examining facilities. The company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under the contract. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to reinsurance claims three (3) years after final adjustment of such claims.

§ 1906.39 Information and annual statements.

The company shall furnish to the reinsurer such summaries and analyses of information in its records as may be necessary to carry out the purposes of the Urban Property Protection and Reinsurance Act of 1968, 12 U.S.C. 1749bbb–1749bbb–21, in such form as the reinsurer, in cooperation with the State insurance authority, shall prescribe; and the company shall file with the reinsurer a true and correct copy of the company's Fire and Casualty Annual Statement, or amendment thereof, as filed with the State insurance authority of the company's domiciliary State, at the time it files such statement or amendment with the State insurance authority. The company shall also file with the reinsurer an equivalent of page 14 of such annual statement for each State in which reinsurance is provided under the contract.

PART 1907—STATE REIMBURSEMENT REQUIREMENT

Sec.

1907.1 State reimbursement requirement in general.
1907.2 Amount of State share.
1907.3 Timing of State legislation.
1907.4 Source of State share.
1907.5 Timing of State payments.
1907.6 Effect of failure to enact State legislation.
1907.7 Notification of enactment.

AUTHORITY: The provisions of this Part 1907 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

§ 1907.1 State reimbursement requirement in general.

(a) Section 1223(a)(1) of the National Housing Act (12 U.S.C. 1749bbb–9), added by the Urban Property Protection and Reinsurance Act of 1968, hereinafter referred to as the "Act," prohibits the Secretary of Housing and Urban Development from offering riot loss reinsurance with respect to any line of insurance in a State which does not by the close of the second full regular session of the appropriate State legislative body following August 1, 1968, adopt legislation, retroactive to August 1, 1968, which enables it to reimburse him annually (to the extent necessary) for a portion of the claims he pays in connection with excessive losses which may occur in that State with respect to the line of insurance reinsured. While in many States no actual payment may be required, legislation providing for such payment, if needed, is required for the continued provision of Federal riot loss reinsurance.

(b) The minimum lines of insurance for which State reimbursement legislation is required as a condition of continued Federal reinsurance for any line are: (1) Fire and extended coverage, (2) vandalism and malicious mischief, (3) other allied lines of fire insurance, (4) burglary and theft, and (5) those portions of multiple peril policies covering similar perils to those provided in subparagraphs (1), (2), (3), and (4) of this paragraph. Optional lines of insurance for which State reimbursement legislation may be enacted on either a group basis or an individual basis are inland marine, glass, boiler and machinery, ocean marine, and aircraft physical damage. But no line of insurance will be eligible for Federal reinsurance in any State after the specified date unless it is included, either explicity or implicity, within the State reimbursement legislation.

§ 1907.2 Amount of State share.

(a) The actual State share is limited to the amount by which the Secretary's total reinsured losses in the State during the current year exceed the total reinsurance premiums received for the same year, and such State share is reduced by (1) any excess of net reinsurance premiums over reinsured losses realized from business in that State since the year for which reimbursement was last required, and (2) any assessments of reinsured companies made under the Federal Standard Reinsurance Contract with respect to the current year.

(b) The maximum State share in any 1 year is an amount equal to 5 percent of the aggregate or total property insurance premiums earned in the State during the calendar year immediately preceding the end of the reinsurance contract year on all lines of insurance for which any reinsurance is provided by the Secretary in the State during the contract year, regardless of the number of companies actually purchasing Federal reinsurance.

§ 1907.3 Timing of State legislation.

To enable companies doing business within a State to continue to participate in the Federal reinsurance program, the State must enact the necessary reimbursement legislation by the close of the second full regular session of the appropriate State legislative body after August 1, 1968, when the Federal Act became law.

§ 1907.4 Source of State share.

Funds for the State share may be raised in any constitutional manner consistent with the intent of the Federal Act to place appropriate responsibility upon the State to share in property insurance losses resulting from riots or civil disorders. The Federal Act provides that the Secretary is to be reimbursed by the State, its political subdivisions, or a governmental corporation or fund established pursuant to State law. Thus, the State share should be financed out of

general revenues or in some other manner which broadly distributes the burden of property insurance losses resulting from riots or civil disorders.

§ 1907.5 Timing of State payments.

It is not required that funds for the State share be made available in advance of the year in which the losses occur. However, the State legislation must provide for a method of financing the State share which will assure timely reimbursement of the Secretary. It is anticipated that notification by the Secretary as to the amount of the State share due with respect to losses in any given year will not be made until the third quarter of the succeeding year. The State payment will be due and payable approximately 60 to 90 days thereafter.

§ 1907.6 Effect of failure to enact State legislation.

If appropriate legislation is not enacted in a given State within the time specified, no Federal reinsurance may thereafter be offered or made applicable to insurance policies written in that State until such legislation is enacted. However, Federal reinsurance on insurance policies written prior to the specified date for the enactment of the State's reimbursement legislation may be continued for the remainder of the current Federal contract year, which ends on April 30.

§ 1907.7 Notification of enactment.

In order to prevent unnecessary lapses in Federal reinsurance coverage, each State insurance authority is requested promptly to notify the Federal Insurance Administrator, Department of Housing and Urban Development, Washington, D.C. 20410, of the date on which the State's reimbursement legislation is effective and to provide him with a copy of the enacted legislation.

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1909—GENERAL PROVISIONS

Subpart A—General

Sec.
1909.1 Definitions.
1909.2 Description of program.
1909.3 Emergency program.

Subpart B—Eligibility Requirements

1909.21 Purpose of subpart.
1909.22 Prerequisites for the sale of flood insurance.
1909.23 Priorities for the sale of flood insurance under the regular program.
1909.24 Suspensions of community eligibility.

AUTHORITY: The provisions of this Part 1909 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013; sec. 1361, 82 Stat. 587; 42 U.S.C. 4102.

Subpart A—General

§ 1909.1 Definitions.

As used in this subchapter—

"Accounting period" means any annual period during which the agreement is in effect, commencing on July 1 and ending on June 30. Each accounting period under the agreement applies separately to the insurance premiums payable, losses incurred, premium equalization and reinsurance payments due, and operating costs and allowances attributable with respect to all policies issued under the program during the accounting period.

"Act" means the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001–4127.

"Actuarial rates" means the risk premium rates, estimated by the Administrator for individual communities pursuant to studies and investigations undertaken by him in accordance with section 1307 of the Act in order to provide flood insurance in accordance with accepted actuarial principles. Actuarial rates also contain provision for operating costs and allowances.

"Actuarial rate zone" means a zone identified on a Flood Insurance Rate Map as subject to a specified degree of flood or mudslide hazards, to which a particular set of actuarial rates applies.

"Administrator" means the Federal Insurance Administrator, to whom the Secretary has delegated the administration of the program (34 F.R. 2680–81, Feb 27, 1969).

"Affiliates" means two or more associated business concerns which are or can be directly or indirectly controlled by one or more of the affiliates or by a third party.

"Agreement" means the contract entered into for any accounting period by and between the Administrator and the Association whereby the Association will provide policies of flood insurance under the program within designated areas and will adjust and pay claims for losses arising under such policies. The agreement is renewed automatically with respect to each subsequent accounting period unless either the Administrator or the Association gives the other written notice of intention to terminate on or before January 31 of the then current accounting period.

"Applicant" means a community whose legislative body has indicated a desire to participate in the National Flood Insurance Program.

"Association" means the National Flood Insurers Association and, as the context may indicate, the insurance pool composed of two or more of its members or any member acting for or on behalf of the Association under the agreement.

"Chargeable rates" means the reasonable premium rates, estimated by the Administrator in accordance with section 1308 of the Act, which are established in order to encourage the purchase of flood insurance.

"Coastal high hazard area" means the portion of a coastal flood plain having special flood hazards that is subject to high velocity waters, including hurricane wave wash and tsunamis.

"Community" means any State or political subdivision thereof with authority to adopt and enforce land use and control measures for the areas within its jurisdiction.

"Criteria" means the comprehensive criteria for land use and control measures developed under section 1361 of the Act for the purposes set forth in §§ 1910.21 and 1910.42 of this subchapter.

"Deductible" means the fixed amount or percentage of any loss not covered by an insurance policy. The amount of the deductible must be exceeded before insurance coverage takes effect.

"Department" means the U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

"Dwelling" or "dwelling property" means a structure designed for the occupancy of from one to four families, including such a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

"Eligible community" means a community in which the Administrator has authorized the sale of flood insurance under the program.

"Emergency Flood Insurance Map" means an official map on which the Administrator has delineated one or more areas eligible for the sale of insurance under the Emergency Flood Insurance Program.

"Emergency Flood Insurance Program" or "emergency program" means the National Flood Insurance Program authorized by the Act, as implemented on an emergency basis and without the need for individual community rate-making studies, in accordance with section 1336 of the Act, 42 U.S.C. 4056.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from (a) the overflow of streams, rivers, or other inland water, or (b) abnormally high tidal water on rising coastal waters resulting from severe storms, hurricanes, or tsunamis.

"Flood Hazard Boundary Map" means an official map or plat of a community, issued or approved by the Administrator, on which the boundaries of the flood plain and/or mudslide areas having special hazards have been drawn. This map must conform to the Special Flood Hazard Map and be of sufficient scale and clarity to permit the ready identification of individual building sites as either within or without the area having special flood hazards.

"Flood insurance" means insurance coverage for both floods and mudslides under the program.

"Flood Insurance Rate Map" means an official map of a community, on which the Administrator has delineated the area in which flood insurance may be sold under the regular flood insurance program and the actuarial rate zones applicable to such area.

"Flood plain" or "flood-prone area" means a land area adjoining a river, stream, watercourse, ocean, bay, or lake, which is likely to be flooded.

"Flood plain area having special flood hazards" means that maximum area of the flood plain that, on the average, is likely to be flooded once every 100 years

(i.e., that has a 1-percent chance of being flooded each year).

"Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and land use and control measures.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas required to carry and discharge a flood of a given magnitude.

"Floodway encroachment lines" means the lines marking the limits of floodways on official Federal, State, and local flood plain maps.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under insurance policies issued by an insurance company or other insurer.

"Insurance company" or "insurer" means any person or organization authorized to engage in the insurance business under the laws of any State.

"Land use and control measures" means zoning ordinances, subdivision regulations, building codes, health regulations, and other applications and extensions of the normal police power, to provide standards and effective enforcement provisions for the prudent use and occupancy of flood-prone and mudslide areas.

"Mudslide" means a general and temporary movement down a slope of a mass of rock or soil, artificial fill, or a combination of these materials, caused or precipitated by the accumulation of water on or under the ground.

"Mudslide area" or "mudslide-prone area" means an area characterized by unstable slopes and land surfaces, whose history, geology, soil and bedrock structure, and climate indicate a potential for mudslides.

"Mudslide area having special mudslide hazards" means a mudslide area with a high potential for mudslides.

"Mudslide area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide damage, including but not limited to emergency preparedness plans, mudslide control works, and land use and control measures.

"National Flood Insurers Association" is the Association sponsoring the industry flood insurance pool formed in accordance with sections 1331 and 1332 of the Act (see "Agreement" and "Association"). The Association headquarters is located at 160 Water Street, New York, NY 10038.

"100-year flood" means the highest level of flooding that, on the average, is likely to occur once every 100 years (i.e., that has a 1-percent chance of occurring each year).

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof.

"Policy" means the Standard Flood Insurance policy.

"Policyholder premium" means the total insurance premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the policyholder premium may be based upon either chargeable rates or actuarial rates, or a combination of both.

"Program" means the overall National Flood Insurance Program authorized by the Act, including its required coordination with land management programs in flood-prone areas under both the 1968 Act (regular program) and the 1969 amendment adding section 1336 (emergency program) to the Act.

"Secretary" means the Secretary of Housing and Urban Development.

"Small business" means a concern which together with its affiliates does not have assets exceeding $5 million, does not have a net worth in excess of $2½ million, and does not have an average net income after Federal income taxes for the preceding 2 fiscal years in excess of $250,000 (average net income to be computed without benefit of any carryover loss).

"Small business property" means a structure owned or leased and operated by a small business, including hotels and motels primarily used for transient occupancy of less than 6 months but excluding all other residential properties. The term includes such a structure while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

"Special Flood Hazard Map" means the official map designated by the Administrator to identify (a) flood plain areas having special flood hazards, and/or (b) mudslide areas having special mudslide hazards.

"Standard Flood Insurance Policy" means a standard contract or policy by means of which flood insurance coverage under the program is made available to an insured by the Association. The form of the policy, as well as its terms and conditions, is approved by the administrator and is uniform with respect to all areas.

"Start of construction" means the first placement of permanent construction on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For a structure without a basement or poured footings, the start of construction includes the first permanent framing or assembly of the structure or any part thereof on its pilings or foundation, or the affixing of any prefabricated structure or mobile home to its permanent site. Permanent construction does not include land preparation, land clearing, grading, filling; excavation for basement, footings, piers, or foundations; erection of temporary forms; the installation of piling under proposed subsurface footings; installation of sewer, gas, and water pipes, or electric or other service lines from the street; or existence on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not a part of the main structure.

"State" means the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the actual cash value of the structure either (a) before the improvement is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. Substantial improvement is started when the first alteration of any structural part of the building commences.

"Water surface elevation" means the heights in relation to Mean Sea Level expected to be reached by floods of various magnitudes and frequencies at pertinent points in the flood plains of coastal or riverine areas.

§ 1909.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by title XIII of the Housing and Urban Development Act of 1968 (Public Law 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide protection was added to the program by the Housing and Urban Development Act of 1969 (Public Law 91-152, December 24, 1969). The program operates through an insurance industry pool under the auspices of the National Flood Insurers Association, by means of a Federal subsidy to make up the difference between actuarial rates and the rates actually charged to consumers for the protection provided. In many cases, the Federal subsidy amounts to more than 90 percent of the cost of the insurance.

(b) In order to qualify for the sale of federally subsidized flood insurance before December 31, 1971, a community must agree to adopt and enforce adequate land use and control measures, consistent with Federal criteria (set forth in Part 1910 of this subchapter) by that date. Such measures must be designed to reduce or avoid future flood or mudslide damage and include effective enforcement provisions. Federal flood insurance may not be sold after December 31, 1971, in any community that has not by that date adopted the required local ordinances. Section 1909.24 provides for the reinstatement of eligibility in communities that adopt such measures after that date.

(c) Communities that do not initially qualify for the sale of insurance by December 31, 1971, must adopt and submit the required land use and control measures to the Administrator as part of their application. If the measures

submitted appear to be consistent with Subpart A of Part 1910 of this subchapter, they will be accepted, subject to more detailed subsequent review and/or the availability of additional technical information.

(d) Minimum requirements for adequate land use and control measures are set forth in § 1910.3 of this subchapter for flood-prone areas and in § 1910.4 of this subchapter for mudslide areas. Each community must meet the applicable requirements, which are based on the amount of technical information available to the community. A flood-prone community must control development within the area of the 100-year flood unless it is determined for good cause that such a standard would not be economically and socially desirable and would unreasonably curtail its future growth and vitality. If the community in good faith makes such a determination, it must submit the ordinances it has adopted, together with economic and technical justification for the lesser standards they contain, to the Administrator for his review in accordance with § 1910.5 of this subchapter. If the Administrator does not concur in the community's determinations, he will inform the community of the modifications it must make in its measures and give it a specified period of time to make the required modifications. During this period the community's eligibility for the sale of flood insurance will be unaffected.

§ 1909.3 Emergency program.

The 1968 Act required a ratemaking study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Public Law 91–152, December 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program (which was authorized for the 2-year period ending December 31, 1971) does not affect the requirement that a community must adopt adequate land use and control measures but permits insurance to be sold before a study is conducted to determine actuarial rates for the community. The amended program still requires the charging of actuarial rates for higher limits of coverage for existing structures and for all new construction in areas having special flood and/or mudslide hazards. After December 31, 1971, under existing law, no properties can be newly insured or have policies renewed except those in communities for which actuarial rates are available.

Subpart B—Eligibility Requirements

§ 1909.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the flood insurance program.

§ 1909.22 Prerequisites for the sale of flood insurance.

(a) In order to qualify for Federal flood insurance a community must apply for eligibility for the entire area within its jurisdiction, and must submit—

(1) Copies of official legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the Federal Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A summary of State and local public and private flood plain or mudslide area management measures, if any, that have been adopted for the flood plain areas and/or mudslide areas in the community. This submission may be in any suitable form, but should list or enclose copies of easements, zoning, building, and subdivision regulations, health codes, and other corrective and preventive measures instituted to reduce or prevent flood or mudslide damage;

(4) A large-scale map of the entire area under the community's jurisdiction, identifying local flood plain areas and mudslide areas, if any, and showing the names of rivers, bays, gulfs, lakes, and similar bodies of water that cause floods;

(5) A brief summary of the community's history of flooding and/or mudslides and the characteristics of its flood plain and/or mudslide areas, if available, including the locations of any known high water marks and/or mudslide occurrences. A current flood plain information report prepared by the U.S. Army Corps of Engineers or a similar report will satisfy the requirements of this subparagraph and the preceding subparagraph with respect to flood plain areas;

(6) A clean map of the community, preferably in black and white, clearly delineating its corporate limits, which can be reproduced for publication. If the best available map is copyrighted, a letter of release must be obtained;

(7) A list of the incorporated communities within the applicant's boundaries (if the application is made on behalf of a county or a political subdivision containing more than one incorporated community);

(8) Estimates relating to flood-prone area concerning:

(i) Population,

(ii) Number of one to four family residences,

(iii) Number of small businesses;

(9) Address of a local repository, such as a municipal building, where the flood insurance and flood hazard maps will be made available for public inspection;

(10) If applying before December 31, 1971, a commitment to adopt by that date and maintain in force for areas having special flood and/or mudslide hazards adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in Part 1910 of this subchapter;

(11) If applying after December 31, 1971, a copy of the land use and control measures the community has adopted in order to meet the requirements of §1910.3 and/or § 1910.4 of this subchapter;

(12) A commitment to recognize and duly evaluate flood and/or mudslide hazards in all official actions relative to land use in the areas having special flood and/or mudslide hazards and to take such other official action as may be reasonably necessary to carry out the objectives of the program; and

(13) A commitment to:

(i) Delineate or assist the Administrator, at his request, in delineating the limits of the areas having special flood and/or mudslide hazards on available local maps of sufficient scale to identify the location of building sites;

(ii) Provide such information as the Administrator may request concerning present uses and occupancy of the flood plain and/or mudslide area;

(iii) Maintain for public inspection and furnish upon request, with respect to each area having special flood hazards, information on elevations (in relation to mean sea level) of the lowest floors of all new or substantially improved structures and, where there is a basement, the distance between the first floor and the bottom of the lowest opening where water flowing on the ground will enter; and

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain or mudslide areas, and cooperate with neighboring communities with respect to management of adjoining flood plain and/or mudslide areas in order to prevent aggravation of existing hazards;

(b) An applicant must also legislatively—

(1) Appoint or designate an agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section; and

(2) Designate an official responsible to submit, on each anniversary date of the community's initial eligibility, an annual report to the Administrator on the progress made during the past year within the community in the development and implementation of flood plain and/or mudslide area management measures.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section must be submitted to the Federal Insurance Administrator, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

§ 1909.23 Priorities for the sale of flood insurance under the regular program.

Communities which comply with the requirements of § 1909.22 are placed on a register of areas eligible for ratemaking studies and will be selected from this

register for ratemaking studies on the basis of the following considerations—

(a) Location of community and urgency of need for flood insurance;

(b) Population of community and intensity of existing or proposed development of the flood plain and/or the mudslide area;

(c) Availability of information on the community with respect to its flood and/or mudslide characteristics and previous losses;

(d) Recommendations of State officials as to communities within the State which should have priorities in flood insurance availability; and

(e) Extent of State and local progress in flood plain and/or mudslide area management, including actual adoption of land use and control regulations consistent with related ongoing programs in the area.

§ 1909.24 Suspensions of community eligibility.

(a) A community eligible for the sale of flood insurance which fails to provide official notice to the Administrator by December 31, 1971, that it has adopted land use and control measures for its flood-prone and mudslide-prone areas in accordance with the requirements of Subpart A of Part 1910 of this subchapter shall automatically lose its eligiblity at midnight on that date. A community which provides such official notice but fails to submit the required land use and control measures to the Administrator by January 15, 1972, for review shall automatically lose its eligibility at midnight on that date. The community's eligibility shall remain terminated until the land use and control measures have been received by the Administrator.

(b) The Administrator shall promptly notify the Association of those communities whose eligibility has been suspended, and the Association shall promptly so notify its servicing companies. Flood insurance shall not be sold or renewed in any suspended community until the Association is subsequently notified by the Administrator of the date of the community's formal reinstatement. Policies sold or renewed within a community during a period of ineligibility shall be deemed void and unenforceable whether or not the parties to the sale or renewal had actual notice of the ineligibility.

(c) Communities eligible for the sale of flood insurance after December 31, 1971, shall not thereafter lose their eligibility because of the inadequacy of the land use and control measures they have adopted except upon 30 days' prior written notice and publication in the FEDERAL REGISTER.

PART 1910—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Land Use and Control Measures

Sec.
1910.1 Purpose of subpart.
1910.2 Minimum compliance with land management criteria.
1910.3 Required land use and control measures for flood-prone areas.
1910.4 Required land use and control measures for mudslide areas.
1910.5 Exceptions because of local conditions.
1910.6 Revisions of criteria for land use and control.

Subpart B—Additional Considerations in Managing Flood-Prone and Mudslide-Prone Areas

1910.21 Purpose of subpart.
1910.22 State and local development goals.
1910.23 Planning considerations for flood-prone areas.
1910.24 Planning considerations for mudslide-prone areas.
1910.25 State coordination.
1910.26 Local coordination.

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Subpart A—Requirements for Land Use and Control Measures

§ 1910.1 Purpose of subpart.

(a) Section 1315 of the Act provides that flood insurance shall not be sold or renewed under the program within a community after December 31, 1971, unless the community has adopted adequate land use and control measures consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with section 1361 of the Act by which the Administrator will determine the adequacy of a community's land use and control measures. These measures must be applied uniformly throughout the community to all privately and publicly owned land within flood-prone or mudslide areas. Except as otherwise provided in § 1910.5, the adequacy of such measures shall be determined on the basis of the standards set forth in § 1910.3 for flood-prone areas and in § 1910.4 for mudslide areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood and mudslide hazards, to the extent that they are known, in all official actions relating to land use and control.

§ 1910.2 Minimum compliance with land management criteria.

(a) A flood-prone community which becomes eligible for sale of flood insurance prior to December 31, 1971, must have land use and control measures in effect by that date which at least meet the requirements of § 1910.3(a) in order to remain eligible after that date. In addition, the community must meet the respective requirements of § 1910.3 (b), (c), (d), or (e) within 6 months from the date it receives the data required for compliance with the applicable paragraph or by December 31, 1971, whichever is later.

(b) A flood-prone community applying for flood insurance eligibility after December 31, 1971, must meet the standards of § 1910.3(a) in order to become eligible. Thereafter, the community will be given a period of 6 months from the date it receives the data set forth in § 1910.3 (b), (c), (d), or (e) in which to meet the requirements of the applicable paragraph.

(c) A mudslide-prone community which becomes eligible for sale of flood insurance prior to December 31, 1971, must have land use and control measures in effect by that date which meet the requirements of § 1910.4(a) to remain eligible after that date. In addition, the community must meet the requirements of § 1910.4(b) within 6 months after the date its mudslide areas having special mudslide hazards are delineated or by December 31, 1971, whichever is later.

(d) A mudslide-prone community applying for flood insurance eligibility after December 31, 1971, must meet the standards of § 1910.4(a) in order to become eligible for such insurance. Thereafter, the community will be given a period of 6 months from the date the mudslide areas having special mudslide hazards are delineated in which to meet the requirements of § 1910.4(b).

(e) Communities identified in Part 1915 of this subchapter as containing both flood plain areas having special flood hazards and mudslide areas having special mudslide hazards must adopt land use and control measures for each type of hazard consistent with the requirements of §§ 1910.3 and 1910.4.

(f) Local flood and mudslide land use and control measures should be submitted to the State coordinating agency designated pursuant to § 1910.25 for its advice and concurrence. The submission to the State should clearly describe proposed enforcement procedures.

(g) The community official responsible for submitting annual reports to the Administrator pursuant to § 1909.22(b)(2) of this subchapter shall also submit copies of each annual report to any State coordinating agency and to other appropriate State and local bodies, and shall inform the Administrator of the agencies to which the annual reports are sent.

§ 1910.3 Required land use and control measures for flood-prone areas.

The Administrator generally will provide the data upon which land use and control measures must be based. If the Administrator has not provided sufficient data to furnish a basis for these measures in a particular community, the community may initially use hydrologic and other data obtained from other Federal or State agencies or from consulting services, pending receipt of data from the Administrator. However, when special hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. In all cases the minimum requirements governing the adequacy of the land use and control measures for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has declared an entire community a flood plain

area having special flood hazards and has not defined the special flood hazard areas more precisely, has not provided water surface elevation data, and has not provided sufficient data to indentify the floodway or coastal high hazard area, the community must—

(1) Require building permits for all proposed construction or other improvements in the community;

(2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must (i) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) use construction materials and utility equipment that are resistant to flood damage, and (iii) use construction methods and practices that will minimize flood damage;

(3) Review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided so as to reduce exposure to flood hazards; and

(4) Require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(b) When the Administrator has identified the flood plain area having special flood hazards, but has produced neither water surface elevation data nor data sufficient to identify the floodway or coastal high hazard area, the minimum land use and control measures adopted by the community for the flood plain must—

(1) Take into account flood plain management programs, if any, already in effect in neighboring areas;

(2) Apply at a minimum to all areas identified by the Administrator as flood plain areas having special flood hazards;

(3) Provide that within the flood plain area having special flood hazards, the laws and ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting laws, ordinances, or codes;

(4) Require building permits for all proposed construction or other improvements in the flood plain area having special flood hazards;

(5) Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair (i) uses construction materials and utility equipment that are resistant to flood damage, and (ii) uses construction methods and practices that will minimize flood damage;

(6) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes) (i) is protected against flood damage, (ii) is designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure, (iii) uses construction materials and utility equipment that are resistant to flood damage, and (iv) uses construction methods and practices that will minimize flood damage;

(7) Review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (ii) adequate drainage is provided so as to reduce exposure to flood hazards; and

(8) Require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(c) When the Administrator has identified the flood plain area having special flood hazards, and has provided water surface elevations for the 100-year flood, but has not provided data sufficient to identify the floodway or coastal high hazard area, the minimum land use and control measures adopted by the community for the flod plain must—

(1) Meet the requirements of paragraph (b) of this section;

(2) Require new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood;

(3) Require new construction or substantial improvements of non-residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood; and

(4) In riverine situations, provide that until a floodway has been designated, no use, including land fill, may be permitted within the flood plain area having special flood hazards unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and anticipated uses, will not increase the water surface elevation of the 100-year flood more than 1 foot at any point.

(d) When the Administrator has identified the riverine flood plain area having special flood hazards, has provided water surface elevation data for the 100-year flood, and has provided floodway data, the land use and control measures adopted by the community for the flood plain must—

(1) Meet the requirements of paragraph (b) of this section;

(2) Require new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood.

(3) Require new construction or substantial improvements of nonresidential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood;

(4) Designate a floodway for passage of the water of the 100-year flood. The selection of the floodway shall be based on the principle that the area chosen for the floodway must be designed to carry the waters of the 100-year flood, without increasing the water surface elevation of that flood more than 1 foot at any point;

(5) Provide that existing nonconforming uses in the floodway shall not be expanded but may be modified, altered, or repaired to incorporate floodproofing measures, provided such measures do not raise the level of the 100-year flood; and

(6) Prohibit fill or encroachments within the designated floodway that would impair its ability to carry and discharge the waters resulting from the 100-year flood, except where the effect on flood heights is fully offset by stream improvements.

(e) When the Administrator has identified the coastal flood plain area having special flood hazards, has provided water surface elevation data for the 100-year flood, and has identified the coastal high hazard area, the land use and control measures adopted by the local government for the flood plain must—

(1) Meet the requirements of paragraph (b) of this section;

(2) Require new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood;

(3) Require new construction or substantial improvements of nonresidential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood;

(4) Provide that existing uses located on land below the elevation of the 100-year flood in the coastal high hazard area shall not be expanded; and

(5) Provide that no land below the level of the 100-year flood in a coastal high hazard area may be developed unless the new construction or substantial improvement (i) is located landward of the reach of the mean high tide, (ii) is elevated on adequately anchored piles or columns to a lowest floor level at or above the 100-year flood level and securely anchored to such piles or columns, and (iii) has no basement and has the space below the lowest floor free of obstructions so that the impact of abnormally high tides or wind-driven water is minimized.

§ 1910.4 Required land use and control measures for mudslide areas.

The Administrator generally will provide the data upon which land use and control measures must be based. If the Administrator has not provided sufficient data to furnish a basis for these measures in a particular community, the community may initially use geologic and other data obtained from other Federal or State agencies or from consulting services, pending receipt of data from the Administrator. However, when special hazard area designations and other relevant technical data have been furnished by the Administrator, they shall apply. In all cases the minimum requirements governing the adequacy of the land use and control measures for mudslide-prone raeas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has identified a community as containing mudslide areas having special mudslide hazards, but has not delineated the areas having special mudslide hazards, the community must—

(1) Require the issuance of a permit for any excavation, grading, fill, or construction in the community; and

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides. If a proposed site and improvements are in a location that may have mudslide hazards, a further review must be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must (i) be adequately protected against mudslide damage and (ii) not aggravate the existing hazard.

(b) When the Administrator has delineated the mudslide areas having special mudslide hazards within a community, the community must (1) meet the requirements of paragraph (a) of this section and (2) adopt and enforce as a minimum within such area or areas the provisions of the 1970 edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, CA 91101.

§ 1910.5 Exceptions because of local conditions.

(a) The requirement that each community must have adopted adequate land use and control measures (consistent with the criteria set forth in this subpart) on or before December 31, 1971, is statutory and cannot be waived. However, the Administrator recognizes that exceptional local conditions may render the adoption of a 100-year flood standard or other standards contained in this subpart premature or uneconomic for a particular community. Consequently, to meet the December 31, 1971, statutory deadline, a community may elect standards of protection which do not fully meet the requirements of § 1910.3 or § 1910.4, subject to the provisions of this section.

(b) All local land use and control measures intended to meet the requirements of this subpart shall be submitted to the Administrator after their adoption. If the adopted ordinances appear to reflect compliance with the requirements of this subpart, they will initially be accepted by the Administrator (without detailed examination) in satisfaction of such requirements, and the sale of flood insurance will be continued or approved for the community submitting them. If the Administrator subsequently determines that the adopted land use and control measures are inadequate, either in general or in some particular aspect, he may require their modification within a specified period of time to meet the requirements of this subpart as a condition of the community's further eligibility for flood insurance.

(c) A community that finds it necessary to adopt land use and control measures which vary from the standards set forth in § 1910.3 or § 1910.4 shall, as a condition of initial acceptance of such measures by the Administrator, explain in writing the nature and extent of the variances and the reasons for their adoption and shall include supporting economic, topographic, hydrologic, and other technical data.

§ 1910.6 Revisions of criteria for land use and control.

From time to time the regulations of Part 1910 for land management and use may be revised as experience is acquired under the program and new information becomes available. Eligible communities will be given a reasonable time to revise local ordinances to comply with any such changes.

Subpart B—Additional Considerations in Managing Flood-Prone and Mudslide-Prone Areas

§ 1910.21 Purpose of subpart.

The purpose of this subpart is to encourage the formulation and adoption of overall comprehensive management plans for flood-prone and mudslide-prone areas.

§ 1910.22 State and local development goals.

State and local flood plain and mudslide area land use and control measures should contribute to social and economic development goals by:

(a) Diverting unwarranted and unwise development away from flood-prone and mudslide-prone areas;

(b) Encouraging flood and mudslide control and damage abatement efforts through public and private means;

(c) Deterring the unnecessary or improper installation of public utilities and public facilities in flood-prone and mudslide-prone areas; and

(d) Requiring construction and land use practices that will reduce flooding resulting from surface runoff, improper drainage, or inadequate storm sewers, and reduce the potential for mudslides.

§ 1910.23 Planning considerations for flood-prone areas.

(a) The goals of the land use and control measures adopted by a community for flood plain areas should be—

(1) To encourage only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood loses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life; and

(2) To discourage all other development.

(b) In formulating community development goals and in adoption flood plain use and control measures, each community should consider at least the following factors—

(1) Importance of diverting future development to areas not exposed to flooding;

(2) Possibilities of reserving flood-prone areas for open space purposes;

(3) Possible adverse effects of flood plain development on other flood-prone areas;

(4) How to encourage floodproofing to reduce the flood hazard;

(5) Need for flood warning and emergency preparedness plans;

(6) Need to provide alternative vehicular access and escape routes to be utilized when normal routes are blocked or destroyed by flooding;

(7) Need to establish minimum floodproofing and access requirements for schools, hospitals, nursing homes, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public institutions already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(8) Need to improve local drainage and to control any increased runoff that might increase the danger of flooding or mudslides elsewhere in the area;

(9) Need to coordinate local plans with neighboring flood plain and mudslide area management and conservation programs;

(10) Possibilities of acquiring land or land development rights for public purposes consistent with effective flood plain management;

(11) State and local water pollution control requirements;

(12) For riverine areas, the need for requiring subdividers to furnish delineations of limits of floodways before approving a subdivision; and

(13) For coastal areas, the need to establish programs for building bulkheads, seawalls, breakwaters, and other damage abatement structures, and for preserving natural barriers to flooding, such as sand dunes and vegetation.

§ 1910.24 Planning considerations for mudslide-prone areas

The planning process for areas identified in Part 1915 of this subchapter as containing mudslide areas having special mudslide hazards or which indicate in their applications for flood insurance coverage pursuant to § 1909.22 of this subchapter that they have a history of, or potential for, mudslide problems, should consider—

(a) The existence and extent of the hazard as evaluated by competent professionals;

(b) The potential effects of inappropriate hillside development, including (1) loss of life and personal injuries, and (2) public and private property losses, costs, liabilities, and exposures resulting from potential mudslide hazards;

(c) The means of avoiding the hazard, including the (1) availability of land which is not mudslide-prone and the feasibility of developing such land instead of further encroaching upon mudslide areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, mountainsides, cliffs, and palisades, and (3) advisability of preserving mudslide areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filling, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide, soil, land, and water regulation in neighboring areas;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations, and any other public or quasi-public institutions located in the mudslide area, to enable them to withstand mudslide damage and to facilitate emergency operations; and

(h) Provision for emergencies, including (1) warning, evacuation, abatement, and access procedures in the event of mudslides, (2) enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides, (3) fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides, (4) provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems, (5) similar provisions for sewers which in the event of rupture pose both health and site stability hazards, and (6) provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides.

§ 1910.25 State coordination.

(a) State participation in furthering the objectives of this part should include—

(1) Enacting land use and control measures which regulate flood plain and mudslide area land use;

(2) Enacting where necessary, legislation to enable counties and municipalities to regulate flood plain and mudslide area land use;

(3) Designating an agency of the State government to be responsible for coordinating Federal, State, and local aspects of flood plain and mudslide area management activities in the State;

(4) Assisting in the delineation of mudslide areas, riverine floodways, and coastal high hazard areas and providing all relevant technical data to the Administrator;

(5) Establishing minimum State flood plain and mudslide regulatory standards consistent with those established in this part;

(6) Guiding and assisting municipal and county public bodies and agencies in developing flood plain and mudslide area management plans and land use and control measures;

(7) Recommending priorities for ratemaking studies among those communities of the State which qualify for such studies;

(8) Communicating flood plain and mudslide area information to local governments and to the general public;

(9) Participating in flood and mudslide warning and emergency preparedness programs;

(10) Assisting communities in disseminating information on minimum elevations for structures permitted in flood plain and mudslide areas having special hazards;

(11) Advising public and private agencies (particularly those whose activities or projects might obstruct drainage or the flow of rivers or streams or increase slope instability) on the avoidance of unnecessary aggravation of flood and mudslide hazards;

(12) Requiring that proposed uses of flood plain and mudslide-prone areas conform to standards established by State environmental and water pollution control agencies to assure that proper safeguards are being provided to prevent pollution; and

(13) Providing local communities with information on the program, with particular emphasis on the coordination of State and Federal requirements pertaining to the management of flood-prone and mudslide-prone areas.

(b) For States whose flood plain management program substantially encompass the activities described in paragraph (a) of this section, the Administrator will—

(1) Give special consideration to State priority recommendations before selecting communities for ratemaking studies from the register described in § 1909.23 of this subchapter; and

(2) Seek State approval of local flood plain and mudslide area land use and control measures before finally accepting such measures as meeting the requirements of this part.

§ 1910.26 Local coordination.

(a) Local flood plain and mudslide area management, flood forecasting, flood and mudslide emergency preparedness, and flood and mudslide control and damage abatement programs should be coordinated with relevant Federal, State, and regional programs.

(b) A locality adopting land use and control measures pursuant to these criteria should arrange for coordination with the appropriate State agency of its program of information and education designed to promote public acceptance and use of sound flood plain and mudslide area management practices.

PART 1911—INSURANCE COVERAGE AND RATES

Sec.

1911.1 Special definitions.
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1911.10 Minimum policyholder premiums.

AUTHORITY: The provisions of this Part 1911 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 82 Stat. 575; 42 U.S.C. 4013.

§ 1911.1 Special definitions.

The definitions set forth in § 1909.1 of this subchapter are applicable to this part except that, for the purposes of this part—

(a) "Flood" means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters, (2) the unusual and rapid accumulation or runoff of surface waters from any source, or (3) mudslides which are caused or precipitated by accumulations of water on or under the ground; and

(b) "Eligible dwelling" means a residential structure (including a townhouse or rowhouse) containing four units or less, which is either (1) separated from other structures by standard firewalls or open space, or (2) contiguous to the ground and customarily regarded as a separate structure. The term does not include apartment, cooperative, or condominium complexes containing more than four units, whether or not such units have separate legal titles, except where such units comply with subparagraph (1) or (2) of this paragraph.

§ 1911.2 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the Administrator from time to time as applications are approved under the emergency program and as individual ratemaking studies are completed under the regular program. Lists of such communities are periodically published under Part 1914 of this subchapter.

§ 1911.3 Types of properties eligible for coverage.

(a) Insurance coverage for structures under the program is currently available only for eligible dwellings and for small business properties, as defined in § 1909.1 of this subchapter and §1911.1. It is expected that coverage for other classes of properties will become available at a later date if it appears that the overall purposes of the program, including the adoption by communities of adequate land use and control measures, are being accomplished.

(b) Insurance coverage for contents is available only for content of eligible dwellings and small business properties but may be purchased separately from structural coverage.

(c) Only businesses that meet the definition of small business in §1909.1 of this subchapter may purchase insurance for a small business property.

(d) A business concern may represent in its application for insurance that it is a small business. In the absence of information which would cause the National Flood Insurers Association to question the self-certification, the Association will accept it at face value. However, such representation is subject to review by the Association after the occurrence of a loss but prior to the settlement of a claim. If the insured cannot show that it qualified as a small business at the time of application, the Association may deny the claim and retain all or that portion of the premium necessary to meet the costs of investigating and processing the claim.

§ 1911.4 Limitations on coverage.

(a) All flood insurance made available under the program is subject—

(1) To the terms and conditions of the Standard Flood Insurance Policy, which shall be approved by the Administrator as to both substance and form;

(2) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(3) To the maximum limits of coverage set forth in § 1911.6.

(b) Insurance under the program is available only for loss due to flood, as defined in § 1911.1. The policy covers damage from a general condition of flooding or mudslides in the area which results from other than natural causes, such as the breaking of a dam, but does not cover water or mudslide damage which results from causes on the insured's own property or within his control or from any condition which causes flooding or mudslide damage which is substantially confined to the insured premises or properties immediately adjacent thereto.

(c) The policy does not cover losses from rain, snow, sleet, hail, or water spray. It covers losses from freezing or thawing, or from the pressure or weight of ice and water, only where they occur simultaneously with and as a part of flood damage. It covers mudslide but does not cover damage from earthquakes or similar earth movements which are volcanic or tectonic in origin. It does not cover losses caused by erosion.

(d) The policy protects against loss to contents only at the location described in the application, except that contents necessarily removed from the premises for preservation from a flood or mudslide are protected against loss or damage from flood or mudslide at the new location pro rata for a period of 30 days.

§ 1911.5 Special terms and conditions.

The following terms and conditions of the Standard Flood Insurance Policy should be especially noted—

(a) No flood insurance is available for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain or mudslide area management or control law, regulation, or ordinance.

(b) In order to reduce the administrative costs of the program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if he ceases to have an ownership interest in the covered property at the location described in the policy.

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural losses, $200 or 2 percent of the amount of coverage applicable to the structure, whichever is greater, and (2) for contents losses, $200 or 2 percent of the amount of coverage applicable to the contents, whichever is greater.

(e) Payment for a loss under the policy does not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate flood or mudslide occurrence, but all losses arising out of a continuous or protracted occurrence are deemed to have arisen out of a single occurrence.

(f) The insured may apply up to, but not in excess of, 10 percent of the face amount of the structural coverage under a dwelling policy to appurtenant structures and outbuildings (such as carports, garages, and guest houses) if they do not constitute separate properties. If any such building constitutes a separate dwelling or small business property, it must be insured under a separate policy.

(g) The following are not insurable under the program: Outdoor swimming pools, boathouses, bulkheads, wharves, piers, and docks.

(h) The contents coverage for dwelling properties excludes money and securities, birds or animals, most motor vehicles, boats, trailers, business property, and certain other types of property. It provides only limited amounts of protection for certain other items, such as paintings and jewelry.

(i) The policy on an eligible property may be canceled by the insurer only for nonpayment of premium. However, any willful misrepresentation or concealment of any material fact by the insured at any time voids the entire policy as of the date the wrongful act was committed.

§ 1911.6 Maximum amounts of coverage available.

The maximum limits of coverage of the policy under the regular program are the following, and the maximum limits of coverage under the emergency program are one-half the following—

(a) For dwelling properties containing only one unit:

(1) $35,000 structural coverage,

(2) $10,000 contents coverage, which may be purchased by the owner or the tenant;

(b) For dwelling properties containing two to four units:

(1) $60,000 aggregate structural coverage,

(2) $10,000 contents coverage for each unit, which may be purchased by the owner or the tenant;

(c) For small business properties:

(1) $60,000 aggregate structural coverage,

(2) $10,000 contents coverage for contents related to the premises of each small business occupant.

§ 1911.7 Premium rate determinations.

(a) Pursuant to section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates are referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to estimate the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the program. Such rates are referred to in

this subchapter as "chargeable rates." Generally, for areas having special flood hazards, chargeable rates are considerably lower than actuarial rates.

§ 1911.8 Applicability of actuarial rates.

Actuarial rates are applicable to all flood insurance made available for—

(a) Any property, the construction or substantial improvement of which was started after the Administrator has identified the area in which the property is located as an area having special flood or mudslide hazards under Part 1915 of this subchapter; and

(b) Coverage which exceeds the following limits:

(1) For dwelling properties (i) $17,500 aggregate liability for any property containing only one unit, (ii) $30,000 for any property containing more than one unit, and (iii) $5,000 aggregate liability per unit for any contents related to such unit; and

(2) For a small business property (i) $30,000 for the structure, and (ii) $5,000 for contents for each small business occupant; and

(c) Any eligible property for which the chargeable rates prescribed by this part would exceed the actuarial rates.

§ 1911.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as shown in the following table for all areas designated by the Administrator under Part 1914 of this subchapter for the offering of flood insurance—

Type of structure	Value of structure	Rate per year per $100 coverage on structure	Rate per year per $100 coverage on contents
(1) Single unit dwelling property.	$17,500 and under	$0.40	$0.50
	$17,501–$35,000	.45	.55
	$35,501 and over	.50	.60
(2) Two-to-four unit dwelling property.	$30,000 and under	.40	.50
	$30,001–$60,000	.45	.55
	$60,001 and over	.50	.60
(3) Small business property.	$30,000 and under	.50	1.00
	$30,001–$60,000	.60	1.00
	$60,001 and over	.70	1.00

§ 1911.10 Minimum policyholder premiums.

The minimum policyholder premium required for any policy, regardless of the amount of coverage, is $25. The minimum policyholder premium required for any added coverage or increase in the amount of coverage during the term of an existing policy is $4, regardless of the length of the unexpired term of the policy at the time of the change.

PART 1912—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.
1912.1 Purpose of part.
1912.2 National Flood Insurers Association.
1912.3 Limitations on sale of policies.

Subpart B—Claims Adjustment and Judicial Review

1912.21 Claims adjustment.
1912.22 Judicial review.

AUTHORITY: The provisions of this Part 1912 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1306, 83 Stat. 575; 42 U.S.C. 4013.

Subpart A—Issuance of Policies

§ 1912.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the program is made available to the general public in those communities designated as eligible for the sale of insurance under Part 1914 of this subchapter, and to prescribe the general method by which claims for losses are paid.

§ 1912.2 National Flood Insurers Association.

(a) Pursuant to sections 1331 and 1332 of the Act, the Administrator has entered into the agreement with the Association to authorize it to provide the flood insurance coverage under the program in communities designated by the Administrator and to assume responsibility for the adjustment and payment of claims for losses.

(b) Membership in the Association shall be open to any insurance company or other insurer which—

(1) Is authorized to engage in the insurance business under the laws of any State;

(2) Has total assets of at least $1 million;

(3) Agrees to assume a minimum net loss liability of $25,000 under policies of insurance issued in the name of the Association for each accounting period of membership;

(4) Pays an admission fee equal to $50 for each $25,000 of participation; and

(5) Agrees to such other reasonable conditions as the Association may prescribe, subject to the approval of the Administrator.

(c) No insurer shall be admitted to membership in the Association for a term less than a full accounting period, nor subsequent to July 1 of any accounting period, as defined in § 1909.1 of this subchapter.

(d) Under the agreement, any insurance company or other insurer, insurance agent or broker, or insurance adjustment organization desiring to cooperate with the Association as fiscal agent or otherwise, is permitted to do so to the maximum extent practicable. The Association will use its best efforts to arrange for the issuance of flood insurance to any person qualifying for such coverage under Parts 1911 and 1914 of this subchapter who submits an application to either a member or nonmember company in accordance with the terms and conditions of the agreement.

(e) Communications concerning membership in or cooperation with the Association should be addressed directly to the National Flood Insurers Association, 160 Water Street, New York, NY 10038.

§ 1912.3 Limitations on sale of policies.

(a) Each participating or cooperating insurer offering flood insurance under the program shall be deemed to have agreed, as a condition of such participation or cooperation, that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 1911.6 of this subchapter, in any area the Administrator designates in Part 1914 of this subchapter as eligible for the sale of flood insurance under the program, other than in accordance with this part, the agreement, and the Standard Flood Insurance Policy issued pursuant thereto. Violation of this condition shall, at the discretion of the Administrator, exclude the violator from any further membership in or cooperation with the Association or the program.

(b) The agreement and all activities thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the program, on the ground of race, color, or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

Subpart B—Claims Adjustment and Judicial Review

§ 1912.21 Claims adjustment.

(a) In accordance with the agreement, the Association shall arrange for the prompt adjustment and settlement of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its members, nonmember insurers, or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims. Settlements so made and loss adjustment expenses so incurred shall, subject to audit, be binding on the Administrator.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 1911 and 1912 of this subchapter.

§ 1912.22 Judicial review.

Upon the disallowance by the Association of any claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within 1 year after the date of mailing of the notice of disallowance or partial disallowance of the claim, may, pursuant to section 1333 of the Act, institute an action on such claim against either the Association or the participating insurer which denied the claim, in the U.S. district court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

PART 1913—EXEMPTION FROM DENIAL OF FEDERAL DISASTER BENEFITS

Sec.
1913.1 Purpose of part.
1913.2 Definition of low-income person.
1913.3 Exemption of low-income persons.

AUTHORITY: The provisions of this Part 1913 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1314, 82 Stat. 579; 42 U.S.C. 4021.

§ 1913.1 Purpose of part.

The purpose of this part is to state the circumstances in which the provisions of subsection 1314(a)(2) of the Act shall not apply to low-income persons. Subsection 1314(a)(2) provides that no Federal disaster assistance shall be made available to any persons for the physical loss, destruction, or damage of real or personal property to the extent that such loss, destruction, or damage could have been covered by flood insurance made available under the authority of the Act, and provided that such loss, destruction, or damage occurred subsequent to 1 year following the date flood insurance was made available in the area in which the property was located.

§ 1913.2 Definition of low-income person.

"Low-income person" means an individual or family, as defined in § 235.5 of this title, having an adjusted annual income, as defined in § 235.5 of this title, not exceeding the approved regular income limits for eligibility for housing under sections 235 and 236 of the National Housing Act (12 U.S.C. 1715 z and z–1), as periodically established by the Department for the community in which the property is situated.

§ 1913.3 Exemption of low-income persons.

The provisions of subsection 1314(a)(2) of the Act shall not be applicable to low-income persons under any circumstances.

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Sec.
1914.1 Purpose of part.
1914.2 Flood insurance maps.
1914.3 Procedures under the emergency program.
1914.4 List of eligible communities.

AUTHORITY: The provisions of this Part 1914 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1360, 82 Stat. 587; 42 U.S.C. 4101.

§ 1914.1 Purpose of part.

(a) Sections 1360 and 1307 of the Act contemplate that flood insurance under the regular program will be offered in communities only after the Administrator has identified the areas of special flood and/or mudslide hazards within the community under Part 1915 of this subchapter and has completed a ratemaking study for the applicant community. A period of 15 years ending July 31, 1983, was allotted for this purpose. The priorities for conducting such ratemaking studies are set forth in §§ 1909.23 and 1910.25 of this subchapter. A purpose of this part is periodically to list those communities in which ratemaking studies have been completed, actuarial rates have been established, and the sale of insurance under the regular program has been authorized.

(b) Section 1336 of the Act authorizes an emergency implementation of the Federal Flood Insurance Program whereby, for a period ending on December 31, 1971, the Administrator may make subsidized coverage available to eligible communities prior to the completion of ratemaking studies for such areas. This part also describes procedures under the emergency program and lists communities which become eligible under that program.

§ 1914.2 Flood insurance maps.

(a) The following maps may be prepared for use by the Administrator and the eligible community in connection with the sale of flood insurance—

(1) *Emergency Flood Insurance Map.* This map is used to delineate an area for which the Administrator has authorized the sale of flood insurance under the emergency program. Such a map will usually be issued only when the area for which the sale of flood insurance has been authorized does not conform precisely to the boundaries of the eligible community.

(2) *Flood Insurance Rate Map.* This map is prepared after the ratemaking study for the community has been completed and actuarial rates have been established, and enables the Administrator to authorize the sale of flood insurance under the regular program. It indicates the actuarial rate zones applicable to the community. The symbols used to designate these zones are as follows:

Zone symbol	*Category*
A	Area of special flood hazards.
V	Area of special flood hazards with velocity.
B	Area of moderate flood hazards.
C	Area of minimal flood hazards.
D	Area of undetermined, but possible, flood hazards.
M	Area of special mudslide hazards.
N	Area of moderate mudslide hazards.
C	Area of minimal mudslide hazards.
P	Area of undetermined, but possible, mudslide hazards.

Areas identified as subject to both flood and mudslide hazards will be designated by use of the proper symbols in combination. For example, the symbol "AN" would indicate an area subject to both special flood hazards and moderate mudslide hazards. Areas subject to only one hazard or where both hazards are minimal will be identified by only one symbol.

(3) *Flood Hazard Boundary Map.* This map is issued or approved by the Administrator for use in determining whether individual properties are within or without the flood plain area having special flood hazards and/or the mudslide area having special mudslide hazards. Notice of the issuance or approval of new Flood Hazard Boundary Maps is given in Part 1915 of this subchapter.

(b) The Emergency Flood Insurance Map (if available) or the Flood Hazard Boundary Map and the Flood Insurance Rate Map shall be maintained for public inspection during business hours at the following locations—

(1) The Federal Insurance Administration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410;

(2) The National Flood Insurers Association, 160 Water Street, New York, NY 10038;

(3) The information office of the State agency or agencies designated by each State to cooperate with the Administrator in implementing the program, which shall be listed in § 1914.4 whenever a community within that State becomes eligible under the program;

(4) One or more official locations within the community in which flood insurance is offered, which shall be specified in § 1914.4 at the time the eligibility of the community is announced.

§ 1914.3 Procedures under the emergency program.

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may designate the entire community a flood plain area having special flood hazards and/or a mudslide area having special mudslide hazards. When the Administrator has obtained sufficient technical information to delineate the special flood or mudslide hazard areas more precisely, he may delineate, or he may request the community to delineate subject to his approval, the proposed boundaries of the more limited area having special flood or mudslide hazards on the Flood Hazard Boundary Map. The local map or plat used to prepare the Flood Hazard Boundary Map must be of sufficient scale to show the location of building sites.

(b) Until the Administrator has issued or approved a local Flood Hazard Boundary Map, no flood insurance will be available for any properties newly constructed or substantially improved after a community is identified as having special flood or mudslide hazards. After the issuance or approval of the Flood Hazard Boundary Map, flood insurance for such properties will be available at chargeable rates if they are located outside of the areas then delineated as having special flood or mudslide hazards. Newly constructed or substantially improved properties located within the delineated areas having special flood or mudslide hazards will be able to obtain flood insurance (at actuarial rates) only upon the completion of a ratemaking study for the community and the subsequent issuance by the Administrator of a Flood Insurance Rate Map.

§ 1914.4 List of eligible communities.

The sale of flood insurance is authorized only for communities listed in this section. The maps of such communities are available for public inspection at the State and local repositories set forth under this section.

NOTE: For the list of communities eligible for flood insurance and the locations where Flood Insurance Rate Maps are available for public inspection, see the List of Sections Affected.

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

Sec.
1915.1 Purpose of part.
1915.2 Special Flood Hazard Map.
1915.3 List of communities with special hazard areas.

AUTHORITY: The provisions of this Part 1915 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1360, 82 Stat. 587; 42 U.S.C. 4101.

§ 1915.1 Purpose of part.

Section 1360 of the Act authorizes the Administrator to identify and publish information with respect to all flood plain areas having special flood hazards and mudslide areas having special mudslide hazards. Section 1308(c) of the Act provides that once an area has been so identified, flood insurance will be made available only at actuarial rates within such area with respect to any property which is thereafter constructed or substantially improved. The purpose of this part is to list those communities and the areas thereof which have been identified by the Administrator as having such special flood or mudslide hazards. Additional communities will be added to this list from time to time as the necessary information becomes available.

§ 1915.2 Special Flood Hazard Map.

Any map showing areas having special flood or mudslide areas may be designated by the Administrator as a Special Flood Hazard Map, whether or not such map is of sufficient scale to permit the location of individual building sites. The Administrator may then furnish the Special Flood Hazard Map to the community for use in preparing a proposed Flood Hazard Boundary Map, or else he may prepare the boundary map himself. After its approval by the Administrator, the Flood Hazard Boundary Map will be made available for public inspection in accordance with § 1914.2(b).

§ 1915.3 List of communities with special hazard areas.

NOTE: For the list of communities and the designated flood or mudslide hazard areas issued under this section and not carried in the Code of Federal Regulations, see the List of Sections Affected.

SUBCHAPTER C—FEDERAL CRIME INSURANCE PROGRAM

PART 1930—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

Sec.
1930.1 Definitions.
1930.2 Description of program.
1930.3 Operation of program and inapplicability of State laws.
1930.4 Offer to agents and brokers to sell Federal crime insurance.
1930.5 Duties of servicing companies.
1930.6 Names and addresses of servicing companies.

AUTHORITY: The provisions of this Part 1930 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

§ 1930.1 Definitions.

(a) As used in this subchapter and in the crime insurance policies issued by the Federal Insurance Administrator, unless otherwise defined in the text of such policies—

(1) The following terms shall be defined as set forth in § 1905.1 of this chapter: Act, Administrator, Binder, Person, Property owner, Secretary, State and State insurance authority;

(2) "Adjuster" means any person engaged in the business of adjusting loss claims arising under property insurance policies issued by an insurance company. The term also includes the staff adjusters of servicing companies;

(3) "Affordable rate" means such premium rate as the Secretary determines would permit the purchase of a specific type of insurance coverage by a reasonably prudent person in similar circumstances with due regard to the costs and benefits involved. For the purposes of the sale of Federal crime insurance, the rates set forth in Part 1933 of this chapter shall be deemed affordable;

(4) "Agent or broker" means any person authorized to engage in the property insurance business as an agent or broker under the laws of any State;

(5) "Crime insurance" means insurance against losses resulting from robbery, burglary, larcency, and similar crimes, as more specifically defined and limited in Part 1933 of this chapter and in the various crime insurance policies issued by the insurer. The term does not include automobile insurance or losses resulting from embezzlement;

(6) "Deductible" means the fixed amount or percentage of any loss not covered by an insurance policy. The amount of the deductible must be exceeded before insurance coverage takes effect;

(7) "Eligible premises" means a property eligible for crime insurance coverage under one or more of the types of policies described in Part 1933 of this chapter;

(8) "Insurance company" means any property insurance company, or group of companies, authorized to engage in the insurance business under the laws of any State;

(9) "Insurer" means the Federal Insurance Administrator, U.S. Department of Housing and Urban Development, Washington, D.C. 20410.

(10) "Policyholder premium" means the total insurance premium payable by the insured for the coverage or coverages provided under any insurance policy;

(11) "Program" means the Federal crime insurance program authorized by title VI of the Housing and Urban Development Act of 1970 (Public Law 91–609, Dec. 31, 1970), set forth principally in 12 U.S.C. 1749bbb–10a, et seq.;

(12) "Protective device" means any structural, mechanical, electrical, chemical, or other physical obstacle or device that can be utilized by a property owner to prevent or deter crime or to minimize losses;

(13) "Protective measure" means any protective device or other measure or procedure employed to prevent or deter crime or to minimize losses; and

(14) "Servicing company" means an insurance company or other organization that has entered into an agreement with the insurer to issue and service Federal crime insurance policies on the insurer's behalf in one or more States or areas eligible for the sale of such insurance.

(b) Technical or trade terms used in this subchapter or in the crime insurance policies issued by the Federal Insurance Administrator and not otherwise defined therein shall be deemed to have the most general meaning they have in the standard crime insurance policies providing similar coverages issued by private insurance companies.

§ 1930.2 Description of program.

(a) Title VI of the Housing and Urban Development Act of 1970 (Public Law 91–609, approved Dec. 31, 1970) authorizes the Secretary of Housing and Urban Development on and after August 1, 1971, to make crime insurance available at affordable rates in any State in which a critical market unavailability situation for crime insurance exists that has not been met through appropriate State action. The Secretary is directed to conduct a continuing review of the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law. The Secretary's basic authority under this title has been delegated to the Federal Insurance Administrator.

(b) The purpose of the delayed effective date for the Federal program is to give the private property insurance industry and the State insurance authorities an opportunity to solve the crime insurance unavailability problem through the establishment of appropriate programs under the authority of State law. Where adequate State solutions to the price and market problems are adopted, Federal crime insurance will not be sold.

(c) In States where the sale of Federal crime insurance is undertaken, policies will initially be sold primarily through agents and brokers licensed to engage in the insurance business within the State for which the policy is written. Policies may also be purchased from the appropriate servicing company.

(d) Lists of States designated as eligible for the sale of Federal crime insurance will be published from time to time in § 1931.1 of this chapter, subject to periodic revisions pursuant to determinations by the Federal Insurance Administrator that a critical crime insurance market unavailability or prohibitive cost situation exists in a particular State, or that the standard lines of crime insurance have become available at affordable rates either through a suitable State program or through the private insurance market.

§ 1930.3 Operation of program and inapplicability of State laws.

(a) The crime insurance program authorized by the Act is a direct Federal program, and its operations, receipts, and funds are exempt from any form of

Federal, State, or local taxation in accordance with section 1250 of the Act (12 U.S.C. 1749bbb-20). In carrying out the program, the Administrator is authorized to define terms (section 1203 (b); 1749bbb-2(b)), to issue regulations (section 1247; 1749bbb-17), to establish premium rates (section 1233; 1749bbb-10c), to prescribe terms, conditions, and limits of coverage (section 1231(b); 1749bbb-10a(b)), and to make use of the existing facilities and services of insurance companies, agents, and brokers as fiscal agents of the United States (section 1232; 1749bbb-10b).

(b) No Federal crime insurance policy issued by or on behalf of the insurer shall be subject to any State or local tax or insurance law or regulation, nor shall any agent, broker, or servicing company be subject thereto with respect to any monies received or action taken in providing insurance to the public under the authority of this subchapter; and no insurance policy shall be written by any agent, broker, or servicing company in the name or on behalf of the insurer in any form, or on terms and conditions, or with limits of coverage, or at premium rates, other than those then currently prescribed by the insurer. Failure by any insurance company, broker, or agent to comply with this requirement may result in the immediate suspension or debarment of the violator from any further participation in the program.

(c) Nothing in this § 1930.3 shall be construed as authorizing or denying any State or subdivision thereof the right to impose any income or other tax on fees, commissions, or profits earned by agents, brokers, or servicing companies solely for their own account.

§ 1930.4 Offer to agents and brokers to sell Federal crime insurance.

(a) Pursuant to the authority contained in section 1232 of the Act (12 U.S.C. 1749bbb—10b), the insurer hereby offers to pay to any eligible agent or broker a commission in an amount equal to the specified percentage of the applicable policyholder premium with respect to each Federal crime insurance policy he procures for an eligible property owner, in accordance with the provisions of this subchapter. The actual submission of a valid and complete application resulting in the issuance of a policy to an eligible insured, all on approved forms and in accordance with the provisions of this subchapter, shall be deemed an acceptance of this offer, subject to avoidance from the inception of the policy in the event of fraud or misrepresentation and to cancellation by the insurer (for any of the reasons set forth in § 1931.7 of this chapter) or by the insured, and provided the agent or broker at the time of submitting the application for the prospective insured promptly transmits the gross amount of the policyholder premium then due to the servicing company designated by the insurer for the applicable area and complies, with respect to such policy, with any additional procedural requirements the servicing company may then have imposed with the consent of the insurer. It shall be a further condition of this offer that the agent or broker must certify on the application that he has fully carried out the duties set forth in the "Agent's Duties" section of the applicable Federal crime insurance manual, which shall include explaining to the prospective insured the nature of the coverage provided, the applicable protective device requirements, and the penalties for material misrepresentations. The amount of the commission shall be prorated in the event of the cancellation of any validly issued policy, and the agent or broker shall repay to the servicing company the amount of any unearned commission applicable to the then current term of the policy resulting from any such cancellation.

(b) Commissions earned by eligible agents and brokers under the authority of paragraph (a) of this section shall be paid to them in a lump sum by the servicing company either monthly or on such other equitable basis as the insurer may approve.

(c) The specified commission percentages of the policyholder premium for both residential and commercial insurance coverages shall be the following: Initial policies, territory 01, 16 percent; 02, 15 percent; 03, 14 percent; and for all renewal business, the commission shall be 12 percent. The renewal commission rate shall apply to any property that has previously been insured under the program unless the lapse of time since the termination of the previous policy is in excess of 2 years: *Provided,* That the commission for any such renewed policy shall be deemed payable only to the agent or broker, if any, who actually submits the renewal application or who is identified by the insured on the renewal application as having explained the protective device requirements applicable to the renewal policy.

(d) No service, placement, or other fee shall be charged by any agent, broker, or servicing company to any applicant or property owner under the program.

(e) For the purposes of this offer, an eligible agent or broker means an agent or broker who is, at the time of making application for the policy, authorized to act as an agent or broker with respect to the State where the insured premises are located and who has not been suspended or debarred by the insurer. An eligible property owner is an applicant whose premises to be insured are located in a State then currently designated as eligible for the sale of Federal crime insurance in § 1931.1 of this chapter.

(f) Neither this § 1930.4 nor any acceptance of this offer shall be deemed to confer upon any agent or broker any authority to act for, represent, or bind the insurer or the United States except as otherwise expressly provided herein.

§ 1930.5 Duties of servicing companies.

(a) The general duties of servicing companies shall be as set forth in this § 1930.5, subject to the provisions of the actual contracts entered into with such companies by the insurer.

(b) Except as otherwise required by their contracts with the insurer, servicing companies shall:

(1) Provide information to eligible property owners and to interested agents and brokers within the servicing area;

(2) Provide crime insurance manuals to eligble agents and brokers within the servicing area;

(3) Supply application forms and notice and proof of loss forms to eligible agents and brokers and to prospective applicants on request;

(4) Maintain, control, and account for applications for insurance received from eligible agents, brokers, and applicants;

(5) Verify the eligibility of applicants for the coverages sought;

(6) Issue policies only on forms prescribed and supplied by the insurer, or else promptly notify applicants (through the appropriate agent or broker, if any) of ineligibility;

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant through the agent or broker, if any;

(8) Issue periodic commission payment checks to cooperating agents and brokers;

(9) Provide statistical and accounting records, coding, and reports, in hard copy and machine-readable forms, as specified in the insurer's statistical plan and accounting instructions, and as may be specifically requested by the insurer, all in timely fashion;

(10) Receive, control, and account for all crime insurance claims submitted within its servicing area;

(11) Verify claims data and existence of required protective devices, adjust losses as required by insurer through an impartial selection of adjusters, and promptly pay all valid claims;

(12) Bill policyholders directly for premiums at least 45 days in advance of due dates, and send a copy of each premium or renewal notice to the agent or broker of record, if any;

(13) Periodically obtain updated applications or certifications from insureds for verification and incorporation in statistical and accounting records.

§ 1930.6 Names and addresses of servicing companies.

The following companies have been designated to act as servicing companies for the program in the States indicated for the period commencing August 1, 1971, and ending July 31, 1972:

Connecticut—Aetna Casualty & Surety Co., 111 Pearl Street, Hartford, CT 06103.

District of Columbia—Aetna Casualty & Surety Co., Commerce Building, 1700 K Street NW., Washington, DC 20006.

Illinois—Insurance Company of North America.

Chicago—167 West Jackson Boulevard, Chicago, IL 60604.

St. Louis—Suite 444, Carondelet East Building, 7710 Carondelet Avenue, Clayton, St. Louis, MO 63105.

Peoria—Suite 1600, Savings Building, 411 Hamilton Boulevard, Peoria, IL 61602.

Maryland—Insurance Company of North America.
Baltimore—303 East Fayette Street, Baltimore, MD 21202.
Washington Suburbs—2133 Wisconsin Avenue NW., Washington, DC 20007.
Massachusetts—Aetna Casualty & Surety Co., 10 Post Office Square, Boston, Mass. 02109.
Missouri—Aetna Casualty & Surety Co., 1600 Pierce Building, 112 West Fourth Street, St. Louis, MO 63102.
New York—Aetna Casualty & Surety Co., 151 William Street, New York, NY 10038.
Ohio—Aetna Casualty & Surety Co., Union Commerce Building, 925 Euclid Avenue, Cleveland, OH 44114.
Pennsylvania—Insurance Company of North America.
Harrisburg—1300 Plaza West, 1300 Market Street, Lemoyne, PA 17043.
Philadelphia—625 Walnut Street, Philadelphia, PA 19105.
Pittsburgh—I.N.A. Building, Parkway Center, 875 Greentree Road, Pittsburgh, PA 15220.
Suburban Philadelphia—131 West Wayne Avenue, Wayne, PA 19087.
Rhode Island—American Universal Insurance Co., 114 Wayland Avenue, Box 6328, Providence, RI 02904.

PART 1931—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Sec.

1931.1 States eligible for the sale of crime insurance.
1931.2 Eligibility requirements applicable to property owners.
1931.3 Use of prescribed forms required.
1931.4 Terms and conditions of policy to govern.
1931.5 Where to purchase coverage.
1931.6 How to report claims.
1931.7 Cancellations, modifications, and renewals of coverage.
1931.8 Inquiries and complaints.
1931.9 Penalties for false statements.
1931.10 Nondiscrimination.

AUTHORITY: The provisions of this Part 1931 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

§ 1931.1 States eligible for the sale of crime insurance.

(a) In accordance with section 1231 of the Act (12 U.S.C. 1749bbb–10a), the Administrator has reviewed the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law.

(b) On the basis of the information available to date, the Administrator has concluded that the following States have an unresolved critical market unavailability situation which will necessitate the implementation of the Federal crime insurance program within such States on August 1, 1971:

Connecticut.	Missouri.
District of Columbia.	New York.
Illinois.	Ohio.
Maryland.	Pennsylvania.
Massachusetts.	Rhode Island.

(c) If any of the States listed in paragraph (b) of this section, after the effective date of this subchapter, adopts a suitable program under State law to make the standard lines of crime insurance available within that State at affordable rates, or if such insurance becomes generally available through the normal insurance market at affordable rates, then in either case the eligibility of such State for the subsequent sale of crime insurance under the Program will be promptly terminated by the insurer.

(d) Notwithstanding the provisions of § 1931.7, Federal crime insurance policies in force at the time a State is determined to be ineligible for further participation in the program shall thereupon be terminated upon 30 days' written notice to the policyholder effective on the next 6-month anniversary date of the policy, and no further coverage for such policyholder with respect to premises located in such State shall thereafter be written unless the State again becomes eligible under the program.

§ 1931.2 Eligibility requirements applicable to property owners.

(a) To be eligible for the purchase of Federal crime insurance under the program, a property owner or tenant must:

(1) Apply separately for coverage for each eligible premises within an eligible State and personally sign each application, either on the application form itself or on any applicable amendatory endorsement, or both, as the insurer may require;

(2) Certify, under penalty of Federal law pertaining to fraud or misrepresentation (18 U.S.C. 1001), that each such premises meets the applicable protective device standards set forth in Part 1932 of this chapter;

(3) Pay the 6-month premium installment due at the time of application. Coverage will commence at noon on the day following the date of application unless a later date is specified in the application;

(4) Agree to permit inspections of the insured premises by the insurer or his representative at any reasonable time or times; and

(5) Agree to report to law enforcement authorities all crime losses of property covered under each policy, whether or not a claim is filed.

(b) Failure to comply fully with the requirements of paragraph (a) of this section may result in the avoidance, cancellation, or nonrenewal of coverage, as set forth in § 1931.7.

(c) Any false statement in the application may void the policy. Intentionally false or misleading statements, either in the application or in connection with any claim submitted under the program, may also result in prosecution for fraud under 18 U.S.C. 1001, in accordance with § 1931.9.

§ 1931.3 Use of prescribed forms required.

No Federal crime insurance is authorized to be written under the program on any form other than the form prescribed by the insurer for the type of coverage involved. Any insurance policy purportedly issued on behalf of the insurer or any other form shall not be binding upon the insurer and shall not confer any liability upon the insurer by reason of any act or representation of the agent, broker, or servicing company in illegally causing such policy to be issued.

§ 1931.4 Terms and conditions of policy to govern.

(a) Except as otherwise specifically provided by this subchapter, the respective rights and duties of the insurer and the insured shall be as set forth in the prescribed application form and the prescribed policy form. All purchasers of Federal crime insurance shall be deemed to have knowledge of the terms and conditions of coverage set forth in such policies and in this subchapter. Although the insurer will endeavor to provide actual notice of policy changes through the appropriate servicing company, modifications of this subchapter that are made during the term of an existing policy shall automatically become applicable to the policy at the time of its next renewal. All Federal crime insurance policies shall be issued for a term of 1 year, subject to semiannual premium payments.

(b) The rights of the insurer to require inspections of the insured premises, production of books and records, appraisals of damaged property, subrogation in the event of payment, and prompt notice in the event of loss, shall be as specified in the prescribed policy, of which the application forms a part. The rights of the insured with respect to the coverages provided, extensions of coverage outside the insured premises or with respect to other persons, limits of such coverages, appraisals, cancellations, and judicial review shall be as set forth in the prescribed policy.

(c) Changes in the provisions of this subchapter which broaden or liberalize the coverages being provided under the prescribed policy forms, but do not require any additional premium to be charged, shall be applicable to all existing and future policies of insurance as of the date of their adoption, without the necessity of endorsement.

§ 1931.5 Where to purchase coverage.

Subject to the provisions of this subchapter, Federal crime insurance coverage may be purchased from any property insurance agent or broker authorized to do business in the State in which the premises to be insured are located, or directly from the appropriate servicing company.

§ 1931.6 How to report claims.

Losses under a Federal crime insurance policy which exceed the applicable deductible may be reported either to the agent or broker through whom the application was submitted, or directly to the servicing company designated for the area in which the loss occurs. The claimant will be required to report all pertinent information, including a description of the loss, time, place, ownership, manner of acquisition, cost, depreciation, current value, amount of claim, and whether the insured has incurred previous losses under the policy. A sworn

proof of loss statement must be submitted to the adjuster or servicing company that processes the claim.

§ 1931.7 Cancellations, modifications, and renewals of coverage.

(a) Unless coverage has previously been canceled or renewal is refused by the insurer for one or more of the reasons set forth in this part, each property owner within an eligible State who is validly insured under any policy or policies of insurance issued under the Federal crime insurance program shall be entitled to renew (i.e., to purchase the then current and applicable form of crime insurance) coverage upon the expiration of such existing policy or policies. The renewal shall be subject to the rules, regulations, and policy terms, conditions, and rates then in effect.

(b) A renewal notice will be sent by the servicing company to the insured at least 45 days prior to the expiration date of each policy, accompanied by a premium statement and a renewal application containing a certification to be executed by the insured stating that his premises meet the then applicable Federal crime insurance eligibility requirements, which will be set forth in the notice. The 6-month premium installment then due, together with the insured's certification as required, must be received by the servicing company not later than the expiration date of the previous policy in order to prevent a lapse in coverage. If timely payment is received, no new policy will normally be issued, and an eligible insured's check or receipt shall constitute his proof of payment. However, if timely payment is not received, or if substantial changes have been made in the regulations or provisions governing the pertinent crime insurance coverage during the term of the insured's previous coverage, a new policy in its entirety may be issued. Reinstatement of lapsed policies by servicing companies shall not be permitted.

(c) Changes in limits of coverage may be made only upon the submission of a new or renewal application. If the insured requests that such changes be made effective on the 6-month anniversary date of the original effective date of the policy, no penalty will be incurred and the changed limits of coverage will commence upon the payment of any additional premium required. However, if the property owner desires an effective date other than such 6-month policy anniversary date, the requested change shall be effected only upon cancellation and reissuance of the policy and the insured shall be entitled only to a partial refund of the unearned premium in accordance with normal short-rate cancellation procedures. Such short-rate cancellation procedures shall also be applicable to any cancellation by the insured during the term of any policy, except at the time of the 6-month anniversary date of the original effective date of such policy or upon the insured's moving from the described premises.

(d) Notwithstanding any unqualified cancellation provisions contained in the prescribed policy forms, the insurer hereby limits his right to cancel, or to refuse to renew coverage, to the following grounds: (1) Any nonpayment of premium, (2) fraud or misrepresentation in the application or upon any renewal of coverage, or in connection with either, (3) fraud or misrepresentation in connection with the submission of a claim, (4) the use of the insured premises with the knowledge of any insured for any illegal activity, or (5) any other substantial failure to comply with the provisions of this subchapter or of the insurance policy, as determined by the insurer and stated in its notice of cancellation. Cancellations on any of the grounds in subparagraph (2), (3), or (4) of this paragraph may, at the discretion of the insurer, be made retroactive to the date of the first known wrongful act. Refunds of unearned premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agents' commissions in prior years, if any) in connection with the issuance of the policy and any inspections of the applicant's premises. Except as provided by § 1932.4 of this chapter, cancellations by the insurer for either of the remaining two grounds, or as provided by paragraph (e) of this section, shall be upon 30 days' written notice, and the insured shall be entitled to a short-rate refund of unearned premium, if any.

(e) Willful or repeated failures of an insured to report to law enforcement authorities any losses of property covered under the policy, as required by § 1931.2(a)(5), may be deemed by the insurer to warrant cancellation of coverage upon 30 days' written notice. However, such failure may be waived by the insurer prior to cancellation for good cause shown.

(f) No property owner whose Federal insurance coverage has been canceled (whether from inception or after notice) or for whom the insurer has refused to renew coverage, for any of the reasons in subparagraph (2), (3), (4), or (5) in paragraph (d) of this section or under paragraph (e) of this section, shall be eligible for any further insurance under the program except upon the written waiver of the Administrator, granted for good cause shown. If granted, the waiver of ineligibility must be presented to the appropriate agent, broker, or servicing company by the property owner within 30 days of the date it is granted, and a copy thereof shall be made a part of the property owner's application and shall be incorporated as part of any policy subsequently issued.

§ 1931.8 Inquiries and complaints.

(a) Inquiries or complaints about the Federal crime insurance program should initially be directed to the property owner's agent or broker, or to the servicing company designated for the area in which the premises are located.

(b) Inquiries or complaints with respect to which satisfactory information or action cannot be obtained through local sources, and general or legal inquiries pertaining to the nature of the program, may be addressed to the Federal Insurance Administrator, Department of Housing and Urban Development, Washington, D.C. 20410.

§ 1931.9 Penalties for false statements.

All information provided by an applicant or a claimant on any form approved by the insurer, including representations as to the date on which such form is signed, shall be deemed material to the issuance of the policy applied for and to the disposition of claims submitted thereunder. Any false statement, misrepresentation, or concealment in the execution or submission of such forms, or in any writing or document knowingly submitted by the applicant or claimant in connection therewith, may result in his prosecution by the United States for fraud under 18 U.S.C. 1001, subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

§ 1931.10 Nondiscrimination.

The Federal crime insurance program and all policies issued or serviced thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No persons shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the program, on the ground of race, color, or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this subchapter should be referred to the Administrator.

PART 1932—PROTECTIVE DEVICE REQUIREMENTS

Subpart A—General

Sec.
1932.1 Definitions.
1932.2 Purpose of protective device requirements.
1932.3 Classification of properties.
1932.4 Lack of protective devices voids policy.

Subpart B—Residential Properties

1932.21 Minimum standards for residences and apartments.

Subpart C—Nonresidential Properties

1932.31 Minimum standards for industrial and commercial properties.

AUTHORITY: The provisions of this Part 1932 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

Subpart A—General

§ 1932.1 Definitions.

As used in this subchapter, the term—

(a) "Baffle" means a piece of metal that covers the opening between a door and its frame at the area of penetration of the bolt or latch to deter the insertion of tools and prevent the exertion of pressure against the bolt or latch;

(b) "Central station, supervised service alarm system" means a silent alarm

system that is constantly in operation, which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as the breach of the premises is confirmed;

(c) "Dead bolt" means a locking device using a fixed bolt that, when in locked position, cannot be retracted by a door knob or handle or other normal door opening device or by the application of force against the penetrating end of the bolt;

(d) "Dead latch" means a locking device, usually spring-operated, that incorporates a feature to render the latch rigid in its locked position and incapable of release by prying or by the turning of an outside door knob or handle or similar door opening device;

(e) "Dead lock" means a locking device incorporating a lock that cannot be pushed or retracted into a door or window by the use of tools inserted between the frame of the door or window and the door or window itself. Except as otherwise indicated, a dead lock may be equipped with a dead bolt or a dead latch;

(f) "Double cylinder dead bolt lock" means a dead bolt lock that can be released from its locked position only by a key, whether on the inside or the outside of the door;

(g) "Local alarm system" means an alarm system that signals loudly at the premises by means of one or more tamper-protected sounding devices upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises;

(h) "Silent alarm system" means an alarm system that signals at a location other than the location where it is installed upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises; and

(i) "Throw," when used in the context of a locking device, means the distance that its bolt or latch protrudes from the body of the device when the bolt or latch is in a locked position.

§ 1932.2 Purpose of protective device requirements.

(a) Section 1231(b) of the Act (12 U.S.C. 1749bbb–10a(b)) provides that no Federal crime insurance shall be made available to a property which is deemed by the insurer to be uninsurable or to a property with respect to which reasonable protective measures to prevent loss, consistent with standards established by the insurer, have not been adopted.

(b) It is the intention of the insurer to require at the inception of the program only those protective devices generally in use or readily available for particular types and classes of properties at the present time. As the program progresses, however, the insurer proposes to amend these requirements from time to time to enforce a higher and more effective standard of protection against ordinary property crimes than now exists. Such revised requirements are not expected to be published more often than once a year and will be applicable only to crime insurance policies issued or renewed after their effective date.

(c) Protective device standards that impose less-stringent or optional alternate requirements upon applicants and insureds, as well as clarifications of existing standards, may be published at any time and shall be applicable both to new policies and to renewals and, at the option of the insured, to crime insurance policies already in force.

§ 1932.3 Classification of properties.

The protective devices required under this part fall into two broad categories, residential and commercial. Requirements for residential properties are expected to remain relatively stable and are not likely to vary by classes. The protective devices required for commercial and industrial properties will vary greatly by the type of risk involved and will be changed periodically as experience and knowledge are gained under the program and from studies being undertaken by other public and private agencies.

§ 1932.4 Lack of protective devices voids policy.

(a) Each property owner applying for Federal crime insurance shall be personally responsible for meeting the protective device requirements applicable to the type of property for which he seeks insurance. Ignorance of such requirements shall not be deemed an excuse for any lack of compliance with the protective device requirements of this subchapter, and any person who is doubtful as to whether the protective devices existing on his premises at the time of application meet such requirements should seek competent technical advice before actually making application.

(b) Although agents and brokers are expected to assist and advise property owners as to the requirements for and adequacy of protective devices, no agent or broker shall be authorized to approve or disapprove on behalf of the insurer the adequacy of any required protective devices, and any representation to the contrary is false and shall be void.

(c) Premises found upon inspection to lack installation of the required protective devices shall be deemed to have been misrepresented at the time of application, and no insurance coverage shall be deemed to have attached, regardless of the length of time the policy ostensibly has been in force, unless the property owner can clearly establish that a removal of the protective devices actually occurred subsequent to the issuance of the policy, in which event the policy shall be deemed canceled by the insured as of the date of such removal.

(d) The insured shall promptly notify the servicing company of any malfunction or breakdown of protective devices and supply it with all relevant facts at the time the deficiency occurs. If such deficiency is corrected within the time specified by the servicing company, no lapse in coverage will result.

(e) Premises found upon inspection to be deficient in meeting the then currently applicable protective device requirements because of the uncorrected inadequacy, inoperability, or malfunction of existing protective devices shall, in the absence of evidence of fraud or misrepresentation, be deemed to have been ineligible for coverage from the date of most recent application or renewal, whichever is applicable, and no coverage under the program shall exist with respect to such premises, regardless of the length of time the insured may have had coverage prior to such invalid application or renewal.

Subpart B—Residential Properties

§ 1932.21 Minimum standards for residences and apartments.

In order to be eligible for Federal crime insurance, residential premises shall meet the following minimum standards:

(a) Each exterior doorway or doorway leading to garage areas, public hallways, terraces, balconies, or other areas affording easy access to the insured premises, shall be protected by a door which, if not a sliding door, shall be equipped with a dead lock using either an interlocking vertical bolt and striker, or a minimum ½-inch throw dead bolt, or a minimum ½-inch throw self-locking dead latch.

(b) All sliding doors, first floor and basement windows, and windows opening onto stairways, fire escapes, porches, terraces, balconies, or other areas affording easy access to the premises, shall be equipped with a locking device of any kind.

Subpart C—Nonresidential Properties

§ 1932.31 Minimum standards for industrial and commercial properties.

In order to be eligible for Federal crime insurance, a nonresidential premises shall meet the following minimum standards:

(a) Except for doorways that are completely protected during nonbusiness hours by heavy-duty overhead doors or metal security screens or the equivalent, each exterior door shall be equipped with either a heavy-duty dead lock (utilizing either interlocking vertical bolts and striker or else a 1-inch dead bolt that extends at least one-half inch into the frame of the door), or a heavy-duty padlock (with casehardened steel shackle, five-pin tumbler operation, and unremovable key when in unlocked position), or a comparable dead lock or padlock that provides equivalent protection. Where applicable fire and safety laws

permit their use, double-cylinder locks are recommended.

(b) All exterior grate or grill-type doors, overhead doors, and security screens or grillwork (unless permanently installed) shall be equipped with locks that meet the requirements of paragraph (a) of this section.

(c) Except for doorways that are completely protected during nonbusiness hours by heavy-duty overhead doors or metal security screens or the equivalent, each exterior door shall be of heavy gauge metal, tempered glass, or solid wood core (not less than 1⅜ inches thick) construction, or else shall be covered with metal sheeting of at least 16 gauge (1/16-inch thick) or its equivalent, or with grillwork, to give like protection;

(d) Outside hinge pins shall be welded, flanged, or screw-secured, nonremovable pins;

(e) Except where expressly prohibited by applicable laws pertaining to fire protection, accessible openings exceeding 96 square inches in area and 6 inches in the smallest dimension (other than storefront display windows), shall either meet the standards for exterior doors, or else shall be protected by inside or outside iron bars one-half inch in diameter, or by flat steel material, spaced not more than 5 inches apart and securely fastened, or by iron or steel grills of ⅛-inch material of 2-inch mesh, securely fastened, or by other heavy-duty material that provides equivalent protection. The requirements of this paragraph shall not apply to skylights protected by alarm systems.

(f) The following types of establishments whose inventories pose a particularly heavy risk shall, as a minimum, in addition to the requirements of paragraphs (a) through (e) of this section, be protected by the type of alarm system indicated. If the system specified in subparagraph (1) of this paragraph is not available in the community in which the premises are located, the type of system specified in subparagraph (2) of this paragraph shall be permitted.

(1) Central station, supervised service, alarm systems shall be required for the following:

(i) Jewelry—manufacturing, wholesale, and retail;
(ii) Gun and ammunition shop;
(iii) Wholesale liquor;
(iv) Wholesale tobacco;
(v) Wholesale drug; and
(vi) Fur store.

(2) Silent alarm systems shall be required for the following:

(i) Liquor store;
(ii) Pawn shop;
(iii) Electronic equipment store;
(iv) Wig shop;
(v) Clothing (new) store;
(vi) Coin and stamp shop;
(vii) Industrial tool supply house;
(viii) Camera store; and
(ix) Precious metal storage facility.

(3) Local alarm systems shall be required for the following:

(i) Antique store;
(ii) Art gallery; and
(iii) Service station.

(g) The protective device requirements set forth in this section shall not apply to premises which are insured only under Option 2 against the peril of robbery only, as provided in paragraph (c) of § 1933.25 of this chapter.

PART 1933—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS

Subpart A—Residential Crime Insurance Coverage

Sec.
1933.1 Description of residential coverage.
1933.2 Limits of residential coverage.
1933.3 Amount of residential policy deductible.
1933.4 Residential crime insurance rates.
1933.5 Required residential policy form.

Subpart B—Commercial Crime Insurance Coverage

1933.21 Description of commercial coverage.
1933.22 Limits of commercial coverage.
1933.23 Amount of commercial policy deductible.
1933.24 Classification of commercial risks.
1933.25 Commercial crime insurance rates.
1933.26 Required commercial policy form.

AUTHORITY: The provisions of this Part 1933 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

Subpart A—Residential Crime Insurance Coverage

§ 1933.1 Description of residential coverage.

(a) The purpose of this § 1933.1 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 1933.5.

(b) The initial policy issued by the insurer for residential properties shall be known as the residential crime insurance policy. Subject to its terms, the policy reimburses an insured for loss from burglary and larceny incident thereto, robbery (including observed theft), or attempt thereat, of personal property from the premises or in the presence of an insured, and for damage to the premises caused by any such attempt. It also covers damage to the interior of the part of the building occupied by the named insured's household at the described premises, and to the insured property both therein and away from the premises, caused by vandalism or malicious mischief: *Provided,* That with respect to damage to the building an insured is the owner thereof or is liable for such damage. The policy is subject to the exclusions set forth therein.

(c) The residential crime insurance policy shall be written only for an individual, or for a single family or household, living in a one-to-four family house or as tenants in separate living quarters in an apartment building or dormitory. Premises in hotels (other than residence hotels where normal occupancy exceeds 6 months in duration) and premises within residential properties used in whole or in part for business purposes are not eligible for coverage under the residential policy.

§ 1933.2 Limits of residential coverage.

The residential crime insurance policy may be written in amounts not less than $1,000 and not in excess of $5,000 for each insurable premises. Any amount of insurance, or fraction thereof, above a specified limit shall be charged the applicable rate for the next higher limit of coverage. Specified limits of coverage are set forth in § 1933.4.

§ 1933.3 Amount of residential policy deductible.

The residential crime insurance policy shall be subject to a deductible in the amount of $75 for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater. The face amount of coverage specified in the policy is not reduced by the application of this deductible. Thus, if an insured having a $5,000 policy incurs a $5,000 covered loss, he would receive $4,750. If the loss were $6,000, he would receive the full $5,000.

§ 1933.4 Residential crime insurance rates.

The premium rates for the residential crime insurance policy vary according to the territory in which the insured premises are located, as set forth in Part 1934 of this chapter. Annual premiums for policy limits of $1,000, $2,000, $3,000, and $5,000 in each of these territorial classifications shall be as follows: (a) Territory 01 (low risk)—$30, $40, $50, and $60; (b) territory 02 (average risk)—$40, $50, $60, and $70; and (c) territory 03 (high risk)—$50, $60, $70, and $80.

§ 1933.5 Required residential policy form.

The following shall constitute the application form and the policy form for the residential crime insurance policy, and no other application form or policy form shall be used unless otherwise provided by this § 1933.5. Coverage will commence at noon on the day following the date of application unless a later date is specified in the application.

(a) Owner's or tenant's Residential Crime Insurance Policy application form:

CRIME INSURANCE PROGRAM

RESIDENTIAL CRIME INSURANCE POLICY

This Policy (of which this Application is a part) covers losses from burglary and larceny incident thereto, and robbery, including observed theft, subject to applicable limits and to a deductible, as stated below, and to Federal law and regulations.

FEDERAL INSURANCE ADMINISTRATION

(An Agency of the U.S. Government)

U.S. Department of Housing and Urban Development, Washington, D.C. 20410

APPLICATION

(Type or print heavily in ball point pen)

Policy No. _____
(Insert Social Security Number and add suffix "A," "B," "C," etc., for each separate Application where multiple premises are involved.)
Insured's Name and Mailing Address (include County):
_____
_____
_____
Location of Premises (including County, if different from mailing address):
_____
_____
_____

Effective date: _____
(Not earlier than noon on day following date of application)
Expiration Date: _____
(1 year from effective date)
Producer's Name and Address:
_____
_____
_____
Servicing Company's Name and Address:
_____
_____
_____

1. If not a single-family residence, describe type of building: _____
_____
2. Amount of insurance applied for ($5,000 maximum): $ _____

NOTE: Coverage is subject to a deductible of $75 or 5 percent of the gross amount of any loss, whichever is greater.

3. (a) State whether you have ever previously insured these premises under the Federal crime insurance program: _____
(b) If so, give month and year when coverage was last in force: _____
(c) State reason coverage was terminated: _____
(d) If canceled, state whether canceled by the Insurer or by you: _____
_____
4. If answer to Question 3(a) is yes, did you ever have a claim under your previous policy? _____ Was it paid? _____
5. Do persons other than relatives reside in premises? Yes _____ No _____
If yes, list names _____
_____

Premium Computation: (To be filled in by Agent, Broker, or Servicing Company)
Territory Code: _____ Amount of Coverage: _____
Amount of Annual Premium: $ _____
(One half of annual premium must accompany the Application and be in the form of a check or money order payable to the Federal Insurance Administrator.)

Program Utilization Data:
1. ☐ White (Nonminority)
2. ☐ Negro/Black
3. ☐ American Indian
4. ☐ Oriental
5. ☐ Spanish American
6. ☐ Other Minority

(The information concerning Minority Group Categories is requested for statistical purposes so the Department may determine the degree to which its programs are utilized by Minority families.)

Eligibility Requirements and Unusual Policy Provisions:

1. This Policy is subject to the crime insurance provisions of title VI of the Housing and Urban Development Act of 1970 (Public Law 91-609, December 31, 1970; 12 U.S.C. 1749 bbb-10a et seq.) and the regulations of the Federal Insurance Administration issued pursuant thereto (24 CFR 1930 et seq.). Renewals of this coverage shall be subject to the regulations in force at the time of such renewals.

2. Any false statement in the Application voids the Policy. Intentionally false or misleading statements may result in criminal prosecution under 18 U.S.C. 1001.

3. To be eligible for insurance under the Federal crime insurance program, the insured premises "Must" meet the requirements for protective devices established by the Federal Insurance Administration for that type of property. A list of these requirements is printed on the back of this form.

4. One half of the annual premium must be paid at the time of application. The second installment of the premium will be billed approximately 45 days before its due date and must be received by the servicing company on or before the due date.

5. All losses of property subject to coverage under this Policy must be reported to the law enforcement authorities (whether or not a claim is filed), or coverage under the Policy may be canceled by the insurer.

Certification by Applicant:

"I certify, under penalty of Federal law for fraud or intentional misrepresentation as set forth in 18 U.S.C. 1001, (1) that the statements I have made in this Application, including the signature date set forth below, are true and correct to the best of my knowledge and belief, (2) that I have read the eligibility requirements and protective device requirements, and (3) that to the best of my knowledge and belief the insured premises meet such requirements.

"The producer has ☐ has not ☐ advised me about the required protective devices.

"I further agree to make the insured premises available for inspection in connection with this policy at any reasonable time; and I understand that if at the time of such inspection the insured premises are found not to be protected in the manner required, this Policy will be considered void from its inception and only the portion of the premium not absorbed by administrative expenses in connection with the issuance of such policy and the inspection will be refunded."

_____ _____
(Signature of Insured) (Date)

Certification by Agent or Broker:

"I certify, under penalty of Federal law for fraud or intentional misrepresentation as set forth in 18 U.S.C. 1001, (1) that I am an agent or broker licensed in the State in which the premises are located, (2) that the date of this Application is correct, and is the date on which the Applicant submitted this completed Application to me, and (3) that to the best of my knowledge and belief I have fully explained to the Applicant the nature of the protective device requirements which are prerequisite for coverage under this policy. I also agree that in the event of cancellation of a Policy, I shall ratably refund to the Federal Insurance Administration commissions on the unearned portion of premiums at the same rate at which such commission was originally paid.

_____ _____
(Signature of Agent or Broker) (Date)

(b) Owner's or tenant's Residential Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

RESIDENTIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agrees with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Public Law 91-609 (12 U.S.C. 1749bbb-10a, et seq.) and Subchapter C, Chapter VII, Title 24 of the Code of Federal Regulations (24 F.R. 1930-1934), and (2) the limits of liability, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

I. *Loss by burglary and larceny or robbery, including observed theft.* (a) To pay for loss by burglary and larceny incident thereto, or robbery, including observed theft, of all personal property from the premises or in the presence of an insured.

(b) To pay for loss of property while unattended in or on any motor vehicle or trailer other than public conveyance provided the loss is the result of forcible entry into a fully enclosed and locked luggage compartment, of which entry there are visible marks upon the exterior of said vehicle, but for not more than $500.

II. *Damage.* To pay for damage to the premises and to the insured property by burglary and larceny incident thereto, or robbery, including observed theft, or attempt threat, and for damage to the interior of that portion of any building occupied by the named insured's household at the premises and to the insured property therein or away from the premises by vandalism or malicious mischief: *Provided,* That with respect to damage to the building an insured is the owner thereof or is liable for such damage.

With respect to loss occurring at any part of the premises not occupied exclusively by the named insured's household, this insuring agreement applies only to property owned or used by an insured.

III. *Application of insurance while the premises are rented to another.* Such insur-

ance as is afforded for loss at or damage to the premises applies while the premises are rented by an insured owner or tenant to another for use as a private residence only, subject to the following provisions:

1. The insurance applies only with respect to property owned by an insured.

2. The insurance does not apply (a) to money, securities, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold or platinum, furs, fine arts, antiques, coin or stamp collections, or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

IV. *Application of insurance while the premises are occupied by three or more persons not related to the named insured.* Such insurance as is afforded for loss at or damage to the premises applies while the premises are occupied by three or more persons not related to the named insured owner or tenant, subject to the following provisions:

1. The insurance applies only with respect to property owned by the named insured.

2. The insurance does not apply (a) to money, securities; gems, precious and semiprecious stones, gold or platinum (other than jewelry); antiques, coin or stamp collections; or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

3. Under this insuring agreement, the actual cash value of any one article of jewelry (including watches) shall be deemed not to exceed $50.

V. *Removal to other premises.* If the named insured moves to other premises which he intends to occupy permanently as his private residence, such insurance as it afforded for loss at or damage to the premises designated in the Application applies subject to the following provisions:

1. During the moving, for a period not to exceed thirty (30) days, the insurance applies at the premises and at the other premises and to the insured property while in transit.

2. Upon completion of the moving the insurance applies at the other premises and no longer applies at the original premises: *Provided,* That all coverage under this policy shall cease at the end of the thirty (30) day period, and the policy shall be deemed canceled by the Insurer as of such date.

VI. *Policy period, territory.* This Policy applies only to loss which occurs during the Policy period within a State, as defined in 12 U.S.C. 1749bbb–2 and set forth in 24 CFR 1905.1.

Exclusions

This Policy does not apply:

(a) To loss committed by an insured;

(b) To loss of (1) any aircraft, motor vehicle (other than motorized equipment designed for service purposes and not licensed for highway use), trailer, boat, or the equipment thereof, (2) articles carried or held as samples or for sale or for delivery after sale, or (3) animals, fish, or birds;

(c) To loss sustained by a person not related to an insured who pays board or rent to an insured;

(d) To loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(e) To loss due to nuclear reaction, nuclear radiation, or radioactive contamination, or to any act or condition incident to any of the foregoing;

(f) While the premises are used as a boarding or lodging house or for any purpose other than private residence occupancy;

(g) To property while in the charge of any laundry, cleaner, dyer, tailor, or presser except by robbery or by burglary at such premises;

(h) To property while in the mail;

(i) To loss away from the premises of (1) property pertaining to a business of an insured, (2) property while at any dwelling, including grounds, garages, stables, and other outbuildings incidental thereto, owned or occupied by or rented to an insured except while an insured is temporarily residing therein, (3) property of a residence employee unless at the time of loss he is engaged in the employment of an insured and the property is in his custody, or the property is at a dwelling as aforesaid while an insured is temporarily residing therein, (4) property while unattended in or on any motor vehicle or trailer, other than a public conveyance, unless the loss is the result of forcible entry into a fully enclosed and locked luggage compartment, of which entry there are visible marks upon the exterior of said vehicle, and then for not more than $500, or (5) other property, except personal property owned or used by an insured.

(j) To loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase of this Policy by the regulations of the Federal Insurance Administration, as published at the time of the inception of the then current term of the Policy in Subchapter C, Chapter X, Title 24, Code of Federal Regulations.

Conditions

1. *Definitions*—(a) *Named insured.* "Named insured" means the insured named in the Application. "Insured" means the named insured and any person while a permanent member of the named insured's household, other than (1) a residence employee or (2) a person not related to the named insured or his spouse and who pays board or rent to either.

(b) *Premises.* "Premises" means the premises designated in the Application, including grounds, garages, stables, and other outbuildings incidental thereto.

(c) *Burglary.* "Burglary" or "burglary and larceny incident thereto" means the felonious abstraction of insured property from within the premises by a person making felonious entry therein by actual force and violence, evidenced by visible marks upon, or physical damage to, the exterior of the premises at the place of such entry.

(d) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted on an insured; (2) by putting him in fear of violence; (3) by any other overt felonious act committed his presence and of which he was actually cognizant, provided such other act is not committed by an insured; or (4) from the person or direct care and custody of an insured who has been killed or rendered unconscious.

(e) *Money.* "Money" means currency, coins, bank notes, and bullion.

(f) *Securities.* "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(g) *Business.* "Business" includes trade, profession, or occupation.

(h) *Loss.* "Loss" includes damage.

(i) *Residence employee.* "Residence employee" means an employee of an insured whose duties are incidental to the ownership, maintenance, or use of the premises, including the maintenance or use of automobiles or teams, or who performs elsewhere duties of a similar nature not in connection with an insured's business.

2. *Interests covered.* The insurance does not apply to the interest in insured property of any person or organization, unless included in the named insured's proof of loss.

3. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy.

The limit of the Insurer's liability for loss or damage in any one occurrence shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor the actual cash value thereof at the time of loss: *Provided, however,* That the limit of the Insurer's liability for loss of money is $100, and for loss of securities is $500.

If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

The applicable limit of insurance stated in the application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest, or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the named insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

4. *Insured's duties when loss occurs.* Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through any of its authorized agents, and (b) file detailed proof of loss, duly sworn to, with the Insurer through its authorized agents within sixty (60) days after the discovery of loss. Upon the Insurer's request, the insured and every claimant hereunder shall submit to examination by the Insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate in all matters pertaining to loss or claims with respect thereto.

5. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; provided, that the insurance shall not apply: (a) To property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by an insured.

6. *No benefit to bailee.* The insurance afforded by this Policy shall not inure directly or indirectly to the benefit of any carrier or bailee.

7. *Appraisal.* If the named insured and the Insurer fail to agree as to the amount of loss,

each shall, on the written demand of either, made within sixty (60) days after r ecietp made within sixty (60) days after receipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The named insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal.

The Insurer shall not be held to have waived any of its rights such as, without limitation, the right to deny liability under the Policy by any act relating to appraisal.

8. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured first has knowledge of the loss and within 1 year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb–11.

9. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

10. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

11. *Cancellation.* This Policy may be canceled by the named insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter C, Chapter VII, Title 24 of the Code of Federal Regulations. Except as otherwise provided by such regulations and by Insuring Agreement V(2), notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing.

In the event of cancellation, earned premium shall be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon; if, however, the named insured shall die, this Policy shall cover the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insured: *Provided,* That notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy. If the legal representative of the named insured is not a person who was a permanent member of the named insured's household at the time of the death of the named insured, this Policy shall apply as it applied prior to such death but shall not apply to loss of property owned or used by such legal representative, a member of his household or a residence employee thereof, unless such loss occurs at a part of the premises occupied exclusively by said named insured's household.

13. *Declarations.* By signing the Application or by acceptance of this Policy the named insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the Regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Federal Insurance Administration has accepted the declarations of the Insured set forth in the Application and has caused this Policy to be issued.

Federal Insurance Administrator.

(c) Such endorsements to the owner's or tenant's Residential Crime Insurance Policy forms as the insurer may approve.

Subpart B—Commercial Crime Insurance Coverage

§ 1933.21 Description of commercial coverage.

(a) The purpose of this § 1933.21 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 1933.26.

(b) The initial policy issued by the insurer for commercial properties shall be known as the commercial crime insurance policy. Subject to its terms, the policy reimburses an insured for loss from robbery inside the premises, robbery outside the premises (up to a limit of $5,000 unless an armed guard accompanies the insured's messenger), the wrongful taking of insured property by compelling an insured to admit a person into the premises, safe burglary and larceny incident thereto (up to a limit of $5,000 unless the insured property is in a Class E safe anchored to the floor), theft observed by the insured, theft from a night depository in a bank, burglary and larceny incident thereto, robbery of a watchman (not to exceed $50 for any one article of jewelry), and damage to the premises (of which the insured is owner or for which the insured is liable) as a result of any of the foregoing. The policy is subject to the exclusions set forth therein.

(c) The commercial crime insurance policy may be written for any industrial, commercial, nonprofit, or public property in accordance with the risk classifications set forth in § 1933.24 and within the limits of coverage set forth in § 1933.22, subject to the applicable requirements of this subchapter, such as the requirement for adequate protective devices set forth in Subpart C of Part 1932 of this chapter.

(d) Certain portions of the materials contained in the sections that follow are based upon the Burglary Insurance Manual issued by the Insurance Services Office, 160 Water Street, New York, NY 10038, and are being reproduced in these regulations and in the related commercial crime insurance manual with the permission of the copyright owner.

§ 1933.22 Limits of commercial coverage.

The commercial crime insurance policy may be written in amounts not less than $1,000 and not in excess of $15,000 for each insured premises. The maximum limit of coverage may not be increased by insuring several departments of a single business or institution at one premises as separate premises. Each $1,000 of insurance, or fraction thereof, shall be charged the applicable rate for the full $1,000 of coverage.

§ 1933.23 Amount of commercial policy deductible.

(a) The commercial crime insurance policy for industrial and commercial risks shall be subject to a deductible in the following amounts for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater, in accordance with the categories established in § 1933.25(b)(3): Category I, $50; Category II, $75; Category III, $100; Category IV, $150; all other categories, $200. The face amount of coverage specified in the policy is not reduced by the application of this deductible. Thus, if an insured having a $15,000 policy incurs a $15,000 covered loss, he would receive $14,250. If the loss were $16,000, he would receive the full $15,000.

(b) The commercial crime insurance policy for nonprofit or public property risks shall be subject to a deductible in the amount of $100 for each loss occurrence, or 5 percent of the amount of loss, whichever is greater.

§ 1933.24 Classification of commercial risks.

(a) The governing factor in determining the risk classification applicable to a particular premises is the kind of business conducted by the insured at that location. If there is no specific kind of business applicable to the risk, then the kind of merchandise inventoried and held for sale governs. Such risks take the classification of the merchandise or

inventory comprising the majority value of the contents. For example, a candy store carrying an incidental line of tobacco is still classified as a candy store.

(b) Individual concessionaires operating within a premises take the same classification as the business premises in which such concessionaires are located unless the concessionaire's classification is higher, in which case the concessionaire's classification shall be used.

(c) The following classifications shall be applicable to the commercial crime insurance policy:

Class:		Statistical Code
1	All risks not otherwise classified, including nonprofit and public properties	01
3	Amusement Enterprises (not otherwise classified)	02
2	Automobile Sales and Service	03
2	Billiard and Pool Parlors	04
2	Bowling Lanes or Centers	05
3	Cameras and Photographic Supplies	06
3	Clubs	07
3	Dance Halls and Pavilions	08
2	Drug Stores and Druggists' Sundries	09
3	Dry Cleaners	10
2	Electrical Appliances—Sales and Service	11
3	Furriers	12
2	Garages	13
3	Gasoline Service Stations	14
2	Golf and Other Sports Professionals	15
2	Grocery Stores and Delicatessens	16
3	Gun and Ammunition Shops	17
3	Jewelry Stores	18
3	Laundries	19
3	Liquor Stores	20
2	Meat and Poultry Dealers; Butcher Stores	21
2	Men's and Students' Clothing, 14 years and over	22
3	Pawnbrokers	23
2	Radio and Television—Sales and Service	24
2	Restaurants	25
3	Small loan and Finance Companies	26
3	Taverns	27
3	Theaters	28
2	Tobacco Dealers	29
2	Women's and Junior Teens' Clothing, 14 years and over	30

§ 1933.25 Commercial crime insurance rates.

(a) Premium rates for commercial crime insurance policies shall be determined in accordance with the procedures set forth in paragraph (b) of this section, which will also be contained in the commercial crime insurance manual supplied to any eligible agent or broker upon request. Such request should be made to the servicing company responsible for the area in which the agent or broker is located, the name and address of which is listed in § 1930.6 of this chapter.

(b) The following procedure shall be used to determine the annual rates applicable to commercial crime insurance policies issued under the program:

(1) The risk classification and territory rate shall first be determined in accordance with §§ 1933.24 and 1934.2 of this chapter;

(2) For risks having gross receipts of less than $2 million annually, the base rate for the first $1,000 of coverage shall be determined in accordance with the following table:

	Territory		
Class	01	02	03
01	$70	$80	$100
02	80	100	120
03	100	120	130

For risks having gross receipts between $2 million and $4,999,999, the base rate is 0.0002 of such gross receipts. For risks having gross receipts of $5 million or more, the base rate shall be 0.00025 of such gross receipts;

(3) The base rate determined in subparagraph (2) of this paragraph shall be multiplied by the appropriate multiplier from the following table, as determined by the applicant's Federal income tax return for the most recent taxable year, in order to obtain the actual premium for the first $1,000 of coverage. If the applicant is a nonprofit or public entity whose gross receipts constitute less than its operating budget, its operating budget shall be used in lieu of gross receipts to determine the appropriate multiplier.

Category	Gross receipts (or operating budget, if applicable)	Multiplier
I	Less than $25,000	1.00
II	$25,000-$49,999	1.50
III	$50,000-$99,999	2.00
IV	$100,000-$299,999	2.50
V	$300,000-$499,999	3.00
VI	$500,000-$999,999	3.50
VII	$1,000,000-$1,499,999	4.00
VIII	$1,500,000-$1,999,999	4.50
IX	$2,000,000 or over	2.00

(4) Rates for higher limits of coverage shall be determined by applying to the premium base derived in accordance with subparagraph (3) of this paragraph the appropriate higher limits factor from the following table for the applicable amount of coverage:

Rate for applicable amount of coverage:	Higher limits factor
$1,000	1.00
$2,000	1.95
$3,000	2.85
$4,000	3.70
$5,000	4.50
$6,000	5.25
$7,000	5.95
$8,000	6.60
$9,000	7.20
$10,000	7.75
$11,000	8.25
$12,000	8.70
$13,000	9.10
$14,000	9.45
$15,000	9.75

(5) The product derived in accordance with subparagraph (4) of this paragraph shall then be rounded to the next higher dollar above $0.49 to obtain the chargeable annual policyholder premium for full coverage under all insuring agreements (both robbery and burglary), subject to the specified dollar limit for each single occurrence. This combination of equal amounts of robbery and burglary coverages shall be referred to as "Option 1", and all crime insurance applications shall be assumed to be for coverage under Option 1 unless otherwise specified in Line 6 of the Application.

(c) Option 2: An applicant may elect to purchase coverage only under Insuring Agreements I, II, VI, and VII of the Commercial Crime Insurance Policy, dealing with Robbery, Observed Theft, and Damage resulting from losses under Insuring Agreements I and II only, subject to the specified dollar limit for each single occurrence. To obtain coverage under Option 2, the applicant or his agent or broker shall enter the words "Option 2," the limit of coverage being applied for, and the words "robbery only" on Line 6 of the application form. Thus, if $5,000 in coverage under Option 2 is being applied for, the entry on Line 6 should read, "Option 2: $5,000—robbery only". The premium for coverage under Option 2 shall be determined in accordance with the procedure set forth in Paragraph (b) of this section, multiplied by a factor of 0.60 and then rounded to the next higher dollar above $0.49.

(d) Option 3. An applicant may elect to purchase coverage only under Insuring Agreements III, IV, V, VI, and VII of the Commercial Crime Insurance Policy, dealing with Safe Burglary, Theft from Night Depository, and Burglary or Robbery of a Watchman, and Damage resulting from losses under Insuring Agreements III and V only, subject to the specified dollar limit for each single occurrence. To obtain coverage under Option 3, the applicant or his agent or broker shall enter the words "Option 3", the limit of coverage being applied for, and the words "burglary only" on Line 6 of the application form. Thus, if $5,000 in coverage under Option 3 is being applied for, the entry on Line 6 should read, "Option 3: $5,000—burglary only". The premium for coverage under Option 3 shall be determined in accordance with the procedure set forth in paragraph (b) of this section, multiplied by a factor of 0.50 and then rounded to the next higher dollar above $0.49.

(e) Option 4. An applicant may elect to purchase coverage under both Option 2 and Option 3 only in the same policy, and only if both coverages are applied for (or else one is renewed or rewritten and the other is added) at the same time. To obtain coverage under Option 4, the applicant or his agent or broker shall enter the words "Option 2," followed by the limit of coverage being applied for under that option, and "Option 3," followed by the limit of coverage being applied for under that option, on Line 6 of the application form. Thus, if $5,000 in coverage under Option 2 and $10,000 in coverage under Option 3 are being applied for, the entry on Line 6 should read, "Option 2—$5,000; Option 3—$10,000". The premium for combined coverage under Option 4 shall consist of the sum of the applicable premiums for

the individual coverage under Option 2 and the coverage under Option 3, determined in accordance with paragraphs (c) and (d) of this section.

§ 1933.26 Required commercial policy form.

The following shall constitute the application form and the policy form for the commercial crime insurance policy, and no other application form or policy form shall be used unless otherwise provided by this § 1933.26. Coverage will commence at noon on the day following the date of application unless a later date is specified in the application.

(a) Commercial Crime Insurance Policy application form:

CRIME INSURANCE PROGRAM

COMMERCIAL CRIME INSURANCE POLICY

FEDERAL INSURANCE ADMINISTRATION
(An Agency of the U.S. Government)

This Policy (of which this Application is a part) covers losses from burglary and larceny incident thereto, and robbery, including observed theft, subject to applicable limits and to a deductible, as stated below, and to Federal law and regulations.

U.S. Department of Housing and Urban Development, Washington, D.C. 20410

APPLICATION

(Type or print heavily in ball point pen)

Policy No. _____
(Insert IRS Employer Identification Number and add suffix "A," "B," "C," etc., for each separate Application where multiple premises are involved.)

Effective Date: _____
(Not earlier than noon on day following date of Application)
Expiration Date: _____
(1 year from effective date)

Insured's Name and Mailing Address (include County):

_____
_____
_____

Producer's Name and Address:

_____
_____
_____

Location of Premises (including County, if different from mailing address):

_____
_____
_____

Servicing Company's Name and Address:

_____
_____
_____

1. Describe type of building and (if multiple occupancy) portion occupied by applicant: _____
2. Describe class and type of business: _____
(Use description from tax return, plus any additional information needed to clarify or expand this description.)
3. (a) Does Applicant cash personal checks in excess of the sale? Yes _____ No _____
(b) Does Applicant cash payroll or welfare checks? Yes _____ No _____
4. Does premises contain a Class E safe? Yes _____ No _____
5. Enter gross receipts for preceding taxable year: $_____
6. Amount of insurance applied for ($15,000 maximum): $_____

NOTE: Coverage is subject to a deductible of $50 if gross receipts are less than $25,000, $75 if gross receipts are between $25,000 and $50,000, $100 if gross receipts are between $50,000 and $100,000, $150 if gross receipts are between $100,000 and $300,000, and $200 if gross receipts are $300,000 or over, or 5 percent of the gross amount or any loss, whichever is greater.

7. (a) State whether you have ever previously insured these premises under the Federal crime insurance program: _____
(b) If so, give month and year when coverage was last in force: _____
(c) State reason coverage was terminated: _____
(d) If canceled, state whether canceled by the Insurer or by you: _____

APPLICATION—Continued

8. If answer to Question 7(a) is yes, did you ever have a claim under your previous policy? _____ Was it paid? _____

Premium Computation: (To be filled in by Agent, Broker, or Servicing Company)

A. Annual base Rate
(Territory _____, Class _____): $_____
B. Gross Sales Volume Multiplier
(Gross Sales Volume $_____): _____
C. Higher Limits Factor for Applicable Level of Coverage
(Coverage $_____): _____
D. Final Annual Premium
(A x B x C, rounded to higher dollar above $0.49): $_____

(One half of annual premium must accompany the Application and be in the form of a check or money order payable to the Federal Insurance Administrator.)

PROGRAM UTILIZATION DATA:

Racial or ethnic background of applicant: (If applicant is a corporation or partnership, provide data for controlling stockholders or general partners.) (Check One)

1. ☐ White (Nonminority)
2. ☐ Negro/Black
3. ☐ American Indian
4. ☐ Oriental
5. ☐ Spanish American
6. ☐ Other Minority

(The information concerning Minority Group Categories is requested for statistical purposes so the Department may determine the degree to which its programs are utilized by Minority families.)

Eligibility Requirements and Unusual Policy Provisions:

1. This Policy is subject to the crime insurance provisions of title VI of the Housing and Urban Development Act of 1970 (Public Law 91-609, December 31, 1970: 12 U.S.C. 1749bbb-10a et seq.) and the regulations of the Federal Insurance Administration issued pursuant thereto (24 CFR 1930 et seq.). Renewals of this coverage shall be subject to the regulations in force at the time of such renewals.
2. Any false statement in the Application voids the Policy. Intentionally false or misleading statements may result in criminal prosecution under 18 U.S.C. 1001.
3. To be eligible for insurance under the Federal crime insurance program, the insured premises "Must" meet the requirements for protective devices established by the Federal Insurance Administration for that type of property. A list of these requirements is printed on the back of this form.
4. One half of the annual premium must be paid at the time of application. The second installment of the premium will be billed approximately 45 days before its due date and must be received by the servicing company on or before the due date.
5. All losses of property subject to coverage under this Policy must be reported to the Law Enforcement Authorities (whether or not a claim is filed), or coverage under the Policy may be cancelled by the insurer.

Certification by Applicant:

"I certify, under penalty of Federal law for fraud or intentional misrepresentation as set forth in 18 U.S.C. 1001, (1) that the statements I have made in this Application, including the signature date set forth below, are true and correct to the best of my knowledge and belief, (2) that I have read the eligibility requirements and protective device requirements, and (3) that to the best of my knowledge and belief the insured premises meet such requirements.

"The producer has ☐ has not ☐ advised me about the required protective devices.

"I further agree to make the insured premises available for inspection in connection with this policy at any reasonable time; and I understand that if at the time of such inspection the insured premises are found not to be protected in the manner required, this Policy will be considered void from its inception and only the portion of the premium not absorbed by administrative expenses in connection with the issuance of such policy and the inspection will be refunded."

_____ _____
(Signature of Insured) (Date)

APPLICATION—Continued

Certification by Agent or Broker:

"I certify, under penalty of Federal law for fraud or intentional misrepresentation as set forth in 18 U.S.C. 1001, (1) that I am an agent or broker licensed in the State in which the premises are located, (2) that the date of this Application is correct, and is the date on which the Applicant submitted this completed Application to me, and (3) that to the best of my knowledge and belief I have fully explained to the Applicant the nature of the protective device requirements which are a prerequisite for coverage under this policy. I also agree that in the event of cancellation of a Policy, I shall ratably refund to the Federal Insurance Administration commissions on the unearned portion of premiums at the same rate at which such commission was originally paid."

(Signature of Agent or Broker)

(Date)

(b) Commercial Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

COMMERCIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agree with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Public Law 91-609 and Subchapter C, Chapter VII, Title 24 of the Code of Federal Regulations, and (2) the limits of insurance, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

I. *Robbery, including observed theft, inside the premises.* To pay for loss by robbery or observed theft of money, securities, merchandise, furniture, fixtures, and equipment within the premises.

II. *Robbery, including observed theft, outside the premises.* To pay for loss by robbery or observed theft of money, securities, and merchandise, including the wallet or bag containing such property, while such property is being conveyed by a messenger outside the premises, but no payment shall be made for any loss in excess of $5,000 except when an armed guard accompanies the messenger.

III. *Safe burglary.* To pay for loss by safe burglary and larceny incident thereto of money, securities, and merchandise within the premises but no payment shall be made for any loss in excess of $5,000 except with respect to loss by safe burglary of a Class E safe securely anchored to the floor.

IV. *Theft from night depository.* To pay for loss by theft of money and securities within any night depository in a bank.

V. *Burglary; robbery of watchman.* To pay for loss by burglary and larceny incident thereto or by robbery of a watchman, while the premises are not open for business, of merchandise, furniture, fixtures, and equipment within the premises. Under this insuring agreement, the actual cash value of any one article of jewelry shall be deemed not to exceed $50.

VI. *Damage.* To pay for damage to the premises and to money, securities, merchandise, furniture, fixtures, and equipment within the premises, by robbery, burglary, safe burglary, robbery of a watchman, or attempt thereat, provided with respect to damage to the premises the insured is the owner thereof or is liable for such damage.

VII. *Policy period, territory.* This Policy applies only to loss which occurs during the Policy period within a State, as defined in 12 U.S.C. 1749bbb-2 and set forth in 24 CFR 1905.1.

Exclusions

This Policy does not apply:

(a) To loss due to embezzlement or to any fraudulent, dishonest, or criminal act by any insured, a partner therein, or an officer, employee, director, trustee, or authorized representative thereof, while working or otherwise and whether acting alone or in collusion with others: *Provided*, That this exclusion does not apply to safe burglary or robbery or attempt thereat by other than an insurance or a partner therein;

(b) To loss due to war, whether or not declared, civil war, insurrection, rebellion, or revolution, or to any act or condition incident to any of the foregoing;

(c) To loss of manuscripts, records, or accounts;

(d) Under Insuring Agreements V and VI, to loss occurring during a fire in the premises;

(e) To loss due to nuclear reaction, nuclear radiation, or radioactive contamination, or to any act or condition incident to any of the foregoing;

(f) To any loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase of ths Policy by the regulations of the Federal Insurance Administration, as published at the time of the inception of the current term of the Policy in Subchapter C, Chapter VII, Title 24, Code of Federal Regulations.

Conditions

1. *Definitions*—(a) *Money.* "Money" means currency, coins, bank notes, and bullion; and travelers checks, register checks, and money orders held for sale to the public.

(b) *Securities.* "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(c) *Premises.* "Premises" means the interior of that portion of any building at a location designated in the Application which is occupied by the insured as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls, or stairways. As respects Insuring Agreements I and II only, the premises shall also include the space immediately surrounding such building, provided such space is occupied by the insured in conducting his business.

(d) *Custodian.* "Custodian" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property within the premises, excluding any person while acting as a watchman, porter, or janitor.

(e) *Messenger.* "Messenger" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property outside the premises.

(f) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted upon a messenger or a custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an officer, partner, or employee of the insured; (4) from the person or direct care and custody of a messenger or custodian who has been killed or rendered unconscious; (5) from within the premises by compelling a messenger or custodian by violence or threat of violence while outside the premises to admit a person into the premises or to furnish him with means of ingress into the premises; or (6) from a showcase or show window within the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises.

(g) *Robbery of a watchman.* "Robbery of a watchman" means a felonious taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

(h) *Burglary.* "Burglary" or "burglary and larceny incident thereto" means the felonious abstraction of insured property from within the premises by a person making felonious entry therein by actual force and violence, evidenced by visible marks upon, or physical damage to, the exterior of the premises at the place of such entry.

(i) *Safe burglary.* "Safe burglary" or "safe burglary and larceny incident thereto" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the premises, by a person making felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, evidenced by visible marks upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom, or walls of such vault or such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the premises.

(j) *Jewelry.* "Jewelry" means jewelry, watches, gems, precious or semiprecious stones, and articles containing one or more gems.

(k) *Loss.* "Loss," except as used in Insuring Agreements I through V, includes damage.

(l) *Class E Safe.* "Class E Safe" means a steel safe having walls at least 1 inch thick and doors at least 1½ inches thick, or a vault of steel at least ½ inch thick or of reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 12 inches thick, with steel doors at least 1½ inches thick.

2. *Ownership of property; interests covered.* The insured property may be owned by the insured or held by him in any capacity, whether or not the insured is liable for the loss thereof: *Provided*, That the insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. *Joint insured.* If more than one insured is named in the Application, the insured first named shall act for every insured for all purposes of this Policy. Knowledge possessed or discovery made by any insured shall, for all purposes, constitute knowledge possessed or discovery made by every insured.

4. *Books and records.* The insured shall keep records of all the insured property in such manner that the Insurer can accurately determine therefrom the amount of loss, and if the insured maintains cash funds for the purpose of check cashing, a complete record of each check negotiated shall be kept by the insured showing the names of the maker, payee and drawee bank, and the date and amount of the check, and such records shall be maintained in a receptacle other than used for money and securities.

5. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall

exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy.

The limit of the Insurer's liability for loss shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor as respects securities the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property the actual cash value thereof at the time of loss: *Provided, however,* That the actual cash value of such other property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The applicable limit of insurance stated in the Application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

6. *Insured's duties when loss occurs.* Upon knowledge or discovery of loss or of an occurrence which may give rise to a claim for loss, the insured shall: (a) Give notice thereof as soon as practicable to law enforcement authorities and to the insurer through any of its authorized agents, and (b) file detailed proof of loss, duly sworn to, with the Insurer through its authorized agents within sixty (60) days after the discovery of loss.

Upon the Insurer's request, the insured and every claimant hereunder shall submit to examination by the Insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as the Insurer shall designate, and shall cooperate with the Insurer in all matters pertaining to loss or claims with respect thereto.

7. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; provided, that the insurance shall not apply (a) to property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by the insured.

8. *No benefit to bailee.* The insurance afforded by this Policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

9. *Appraisal.* If the Insured and the Insurer fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty (60) days after receipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal. The Insurer shall not be held to have waived any of its rights by any act relating to appraisal.

10. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy and the applicable regulations of the Federal Insurance Administration, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured discovers the loss and within 1 year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb–11.

11. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

12. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from the asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or challenged, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

13. *Cancellation.* This Policy may be cancelled by the insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter C, Chapter VII, Title 24 of the Code of Federal Regulations. Except as otherwise provided by such regulations, notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing.

In the event of cancellation, earned premium shall be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said Regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

14. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon; if, however, the insured shall die, this Policy shall cover the insured's legal representative as insured; provided that notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy.

15. *Declarations.* By signing the Application or by acceptance of this Policy the insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any its agents relating to this insurance.

In witness whereof, the Federal Insurance Administrator has accepted the declarations of the insured set forth in the Application and has caused this Policy to be issued.

_____,
Federal Insurance Administrator.

(c) Such endorsements to the Commercial Crime Insurance Policy forms as the insurer may approve.

PART 1934—CLASSIFICATION OF TERRITORIES

Sec.
1934.1 Method of classifying territories.
1934.2 List and classification of territories.

AUTHORITY: The provisions of this Part 1934 issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); sec. 1103, 82 Stat. 566; 12 U.S.C. 1749bbb–17.

§ 1934.1 Method of classifying territories.

(a) Because rates are related to urban population concentrations rather than to State boundaries, the insurer has determined that the interests of the public will be best served by classifying territories for the purposes of the Federal crime insurance program on the basis of statistics applicable to entire Standard Metropolitan Statistical Areas, generally referred to as "SMSA's."

(b) Under the classification system prescribed by this part, all communities within the same SMSA shall be assigned the same rating classification, regardless of the State in which they are situated. However, no community within any SMSA will actually be eligible for the sale of Federal crime insurance unless the State in which it is situated is then currently eligible.

(c) Eligible communities that are not part of SMSA's shall be assigned the same territorial classification as the remainder of the State, regardless of the size of the community.

§ 1934.2 List and classification of territories.

(a) Territories shall be classified for statistical and rating purposes as set forth in the insurer's Crime Insurance Manual, which shall apply to all crime insurance policies written under the program. Such manual shall be supplied by the servicing company on behalf of the insurer to all eligible agents and brokers within an eligible State.

(b) The "Territories" section of the Federal Crime Insurance manual shall read as follows:

FEDERAL INSURANCE ADMINISTRATION

CRIME INSURANCE MANUAL

Territories

A. The Territorial arrangement for each state is as follows:

(1) If Standard Metropolitan Statistical Areas exist, they are individually rated.

(2) The remainder of the State is placed in a single category.

B. *Standard Metropolitan Statistical Areas.* The Standard Metropolitan Statistical Area (SMSA) have been adopted as statistical units in order to make it possible for all Federal agencies to utilize the same boundaries in publishing data useful for analyzing metropolitan areas. The general concept of a metropolitan area is one of an integrated economic and social unit with a recognized population nucleus. "SMSA's Are Not Limited to a Single State or a Single City." Since this approach differs from conventional insurance practices, caution is necessary in rating the risk. For example, parts of Maryland and Virginia are in the Washington, D.C., SMSA.

C. *Grading.* Each SMSA and each Remainder of State is classified into one of three territories for rating purposes, viz:

Territory 3	High risk.
Territory 2	Average risk.
Territory 1	Low risk.

D. *Rating of SMSA's:*

SMSA	Statistical code	Rate territory
Abilene, Tex. (includes Taylor and Jones Counties)	0040	2
Akron, Ohio (includes Summit and Portage Counties)	0080	2
Albany, Ga. (includes Dougherty County)	0120	1
Albany-Schenectady-Troy, N.Y. (includes Albany, Rensselaer, Saratoga, and Schenectady Counties)	0160	1
Albuquerque, N. Mex. (includes Bernalillo County)	0200	3
Allentown-Bethlehem-Easton, Pa.-N.J. (includes Lehigh and Northampton Counties, Pa. and Warren County, N.J.)	0240	1
Altoona, Pa. (includes Blair County)	0280	1
Amarillo, Tex. (includes Potter and Randall Counties)	0320	2
Anaheim-Santa Ana-Garden Grove, Calif. (includes Orange County)	0360	3
Anderson, Ind. (includes Madison County)	0400	2
Ann Arbor, Mich. (includes Washtenaw County)	0440	3
Appleton-Oshkosh, Wis. (includes Calumet, Outagamie, and Winnebago Counties)	0460	1
Asheville, N.C. (includes Buncombe County)	0480	2
Atlanta, Ga. (includes Clayton, Cobb, De Kalb, Fulton, and Gwinnett Counties)	0520	2
Atlantic City, N.J. (includes Atlantic County)	0560	3
Augusta, Ga.-S.C. (includes Richmond County, Ga. and Aiken County, S.C)	0600	2
Austin, Tex. (includes Travis County)	0640	2
Bakersfield, Calif. (includes Kern County)	0680	3
Baltimore, Md. (includes Baltimore City and Anne Arundel, Baltimore, Carroll, Howard, and Hartford Counties)	0720	3
Baton Rouge, La. (includes East Baton Rouge Parish)	0760	2
Bay City, Mich. (includes Bay County)	0800	2
Beaumont-Port Arthur, Tex. (includes Jefferson and Orange Counties)	0840	2
Billings, Mont. (includes Yellowstone County)	0880	1
Biloxi-Gulfport, Miss. (includes Harrison County)	0920	1
Binghamton, N.Y.-Pa. (includes Broome and Tioga Counties, N.Y. and Susquehanna County, Pa.)	0960	1
Birmingham, Ala. (includes Jefferson, Shelby, and Walker Counties)	1000	2
Bloomington-Normal, Ill. (includes McLean County)	1040	1
Boise, Idaho (includes Ada County)	1080	2
Boston-Lowell, Mass. (includes Middlesex, Norfolk, Plymouth, and Suffolk Counties)	1120	2
Bridgeport-Stamford-Norwalk, Conn. (includes Fairfield County)	1160	2
Brownsville-Harlingen-San Benito, Tex. (includes Cameron County)	1240	2
Bryan-College Station, Tex. (includes Brazos County)	1260	1
Buffalo, N.Y. (includes Erie and Niagara Counties)	1280	2
Canton, Ohio (includes Stark County)	1320	2
Cedar Rapids, Iowa (includes Linn County)	1360	2
Champaign-Urbana, Ill. (includes Champaign County)	1400	2
Charleston, S.C. (includes Charleston and Berkeley Counties)	1440	2
Charleston, W. Va. (includes Kanawha County)	1480	2
Charlotte, N.C. (includes Mecklenburg and Union Counties)	1520	2
Chattanooga, Tenn.-Ga. (includes Hamilton County, Tenn., and Walker County, Ga.)	1560	2
Chicago, Ill. (includes Cook, Du Page, Kane, Lake, McHenry, and Will Counties)	1600	2
Cincinnati, Ohio-Ky.-Ind. (includes Hamilton, Clermont and Warren Counties, Ohio, and Campbell, Kenton, and Boone Counties, Ky., and Dearborn County, Ind.)	1640	2
Cleveland, Ohio (includes Cuyahoga, Lake, Geauga, and Medina Counties)	1680	2
Colorado Springs, Colo. (includes El Paso County)	1720	2
Columbia, Mo. (includes Boone County)	1740	2
Columbia, S.C. (includes Lexington and Richland Counties)	1760	2
Columbus, Ga.-Ala. (includes Chattahoochee and Muscogee Counties, Ga., and Russell County, Ala.)	1800	2
Columbus, Ohio (includes Franklin, Delaware, and Pickaway Counties)	1840	2
Corpus Christi, Tex. (includes Nueces and San Patricio Counties)	1880	2
Dallas, Tex. (includes Collin, Dallas, Denton, Ellis, Kaufman, and Rockwell Counties)	1920	3
Davenport-Rock Island-Moline, Iowa-Ill. (includes Scott County, Iowa, and Rock Island and Henry Counties, Ill.)	1960	2
Dayton, Ohio (includes Greene, Miami, Montgomery, and Preble Counties)	2000	2
Decatur, Ill. (includes Macon County)	2040	2
Denver, Colo. (includes Adams, Arapahoe, Boulder, Denver, and Jefferson Counties)	2080	3
Des Moines, Iowa (includes Polk County)	2120	2
Detroit, Mich. (includes Macomb, Oakland, and Wayne Counties)	2160	3
Dubuque, Iowa	2200	1
Duluth-Superior, Minn.-Wis. (includes St. Louis County, Minn., and Douglas County, Wis.)	2240	2
Durham, N.C. (includes Durham and Orange Counties)	2280	2
El Paso, Tex. (includes El Paso County)	2320	2
Erie, Pa. (includes Erie County)	2360	1
Eugene, Oreg. (includes Lane County)	2400	2
Evansville, Ind.-Ky. (includes Vanderburgh and Warwick Counties, Ind., and Henderson County, Ky.)	2440	2
Fall River-New Bedford, Mass. (includes Bristol County)	2480	2
Fargo-Moorhead, N. Dak.-Minn. (includes Cass County, N. Dak., and Clay County, Minn.)	2520	2
Fayetteville, N.C. (includes Cumberland County)	2560	2
Flint, Mich. (includes Genesee and Lapeer Counties)	2640	2
Fort Lauderdale-Hollywood, Fla. (includes Broward County)	2680	3
Fort Smith, Ark.-Okla. (includes Sebastian and Crawford Counties, Ark., and LeFlore and Sequoyah Counties, Okla.)	2720	1
Fort Wayne, Ind. (includes Allen County)	2760	2
Fort Worth, Tex. (includes Johnson and Tarrant Counties)	2800	2
Fresno, Calif. (includes Fresno County)	2840	3
Gadsden, Ala. (includes Etowah County)	2880	1
Gainsville, Fla. (includes Alachua County)	2900	2
Galveston-Texas City, Tex. (includes Galveston County)	2920	2
Gary-Hammond-East Chicago, Ind. (includes Lake and Porter Counties)	2960	2
Grand Rapids, Mich. (includes Kent and Ottawa Counties)	3000	2
Great Falls, Mont. (includes Cascade County)	3040	1
Green Bay, Wis. (includes Brown County)	3080	2
Greensboro-High Point-Winston-Salem, N.C. (includes Forsyth, Guilford, Randolph, and Yadkin Counties)	3120	2
Greenville, S.C. (includes Greenville and Pickens Counties)	3160	2
Hamilton-Middletown, Ohio (includes Butler County)	3200	2
Harrisburg, Pa. (includes Cumberland, Dauphin, and Perry Counties)	3240	1
Hartford-New Britain-Bristol, Conn. (includes Hartford and Middlesex Counties)	3280	2
Honolulu, Hawaii (includes Honolulu County)	3320	3
Houston, Tex. (includes Harris, Brazoria, Fort Bend, Liberty, and Montgomery Counties)	3360	2
Huntington-Ashland, W. Va.-Ky.-Ohio (includes Cabell and Wayne Counties, W. Va., Boyd County, Ky., and Lawrence County, Ohio)	3400	2
Huntsville, Ala. (includes Madison and Limestone Counties)	3440	2
Indianapolis, Ind. (includes Marion, Hamilton, Hancock, Hendricks, Johnson, Morgan, Shelby, and Boone Counties)	3480	2
Jackson, Mich. (includes Jackson County)	3520	2
Jackson, Miss. (includes Hinds and Rankin Counties)	3560	1
Jacksonville, Fla. (includes Duval County)	3600	3
Jersey City, N.J. (includes Hudson County)	3640	3
Johnstown, Pa. (includes Cambria and Somerset Counties)	3680	1
Kalamazoo, Mich. (includes Kalamazoo County)	3720	2
Kansas City, Mo.-Kans. (includes Clay, Jackson, Cass, and Platte Counties, Mo., and Johnson and Wyandotte Counties, Kans.)	3760	3
Kenosha, Wis. (includes Kenosha County)	3800	2
Knoxville, Tenn. (includes Anderson, Blount, and Knox Counties)	3840	2
La Crosse, Wis. (includes La Crosse County)	3880	2
Lafayette, La. (includes Lafayette Parish)	3880	2
Lafayette-West Lafayette, Ind. (includes Tippecanoe County)	3920	2
Lake Charles, La. (includes Calcasieu Parish)	3960	2
Lancaster, Pa. (includes Lancaster County)	4000	1
Lansing, Mich. (includes Clinton, Eaton, and Ingham Counties)	4040	2
Laredo, Tex. (includes Webb County)	4080	1
Las Vegas, Nev. (includes Clark County)	4120	3
Lawrence-Haverhill, Mass.-N.H. (includes Merrimack, and Rockingham Counties, N.H., and Essex County, Mass.)	4160	2
Lawton, Okla. (includes Comanche County)	4200	2
Lewiston-Auburn, Maine (includes Androscoggin County)	4240	1
Lexington, Ky. (includes Fayette County)	4280	3
Lima, Ohio (includes Allen, Putnam, and Van Wert Counties)	4320	2
Lincoln, Nebr. (includes Lancaster County)	4360	2
Little Rock-North Little Rock, Ark. (includes Pulaski and Saline Counties)	4400	2
Lorain-Elyria, Ohio (includes Lorain County)	4440	2
Los Angeles-Long Beach, Calif. (includes Los Angeles County)	4480	3
Louisville, Ky.-Ind. (includes Jefferson County, Ky., and Clark and Floyd Counties, Ind.)	4520	3
Lubbock, Tex. (includes Lubbock County)	4600	2
Lynchburg, Va. (includes Lynchburg City and Amherst and Campbell Counties)	4640	1
Macon, Ga. (includes Bibb and Houston Counties)	4680	2
Madison, Wis. (includes Dane County)	4720	2
Manchester, N.H. (includes Hillsboro County)	4760	1
Mansfield, Ohio (includes Richland County)	4800	2
McAllen-Pharr-Edinburg, Tex. (includes Hidalgo County)	4880	1
Memphis, Tenn.-Ark. (includes Shelby County, Tenn., and Crittenden County, Ark.)	4920	2
Meriden, Conn.	4960	1

SMSA	Statistical code	Rate territory
Miami, Fla. (includes Dade County)	5000	2
Midland, Tex. (includes Midland County)	5040	1
Milwaukee, Wis. (includes Milwaukee, Waukesha, Ozaukee, and Washington Counties)	5080	2
Minneapolis-St. Paul, Minn. (includes Anoka, Dakota, Hennepin, Ramsey, and Washington Counties)	5120	2
Mobile, Ala. (includes Mobile and Baldwin Counties)	5160	2
Modesto, Calif. (includes Stanislaus County)	5170	2
Monroe, La. (includes Ouachita Parish)	5200	1
Montgomery, Ala. (includes Elmore and Montgomery Counties)	5240	1
Muncie, Ind. (includes Delaware County)	5280	2
Muskegon-Muskegon Heights, Mich. (includes Muskegon County)	5320	2
Nashville, Tenn. (includes Davidson, Sumner, and Wilson Counties)	5360	2
Newark, N.J. (includes Essex, Morris, and Union Counties)	5640	2
New Haven-Waterbury, Conn. (includes New Haven County)	5480	2
New London-Groton-Norwich, Conn. (includes New London County)	5520	2
New Orleans, La. (includes Jefferson, Orleans, St. Bernard, and St. Tammany Parishes)	5560	2
Newport News-Hampton, Va. (includes Newport News and Hampton Cities and York County)	5680	2
New York, N.Y. (includes Bronx, Kings, New York, Queens, Richmond, Nassau, Rockland, Suffolk, and Westchester Counties)	5600	3
Norfolk-Portsmouth, Va. (includes Norfolk, Chesapeake, Portsmouth, and Virginia Beach Cities)	5720	2
Odessa, Tex. (includes Ector County)	5800	1
Ogden, Utah (includes Weber County)	5840	2
Oklahoma City, Okla. (includes Canadian, Cleveland, and Oklahoma Counties)	5880	2
Omaha, Nebr.-Iowa (includes Douglas and Sarpy Counties, Nebr., and Pottawattamie County, Iowa)	5920	2
Orlando, Fla. (includes Orange and Seminole Counties)	5960	2
Owensboro, Ky. (includes Davies County)	5990	2
Oxnard-Ventura, Calif. (includes Ventura County)	6000	2
Paterson-Clifton-Passaic, N.J. (includes Bergen and Passaic Counties)	6040	2
Pensacola, Fla. (includes Escambia and Santa Rosa Counties)	6080	2
Peoria, Ill. (includes Peoria, Tazwell, and Woodford Counties)	6120	2
Petersburg, Colonial Heights, Va. (includes Petersburg, Colonial Heights, and Hopewell Cities and Prince George and Dinwiddie Counties)	6140	1
Philadelphia, Pa.-N.J. (includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, Pa., and Burlington, Camden, and Gloucester Counties, N.J.)	6160	2
Phoenix, Ariz. (includes Maricopa County)	6200	2
Pine Bluff, Ark. (includes Jefferson County)	6240	1
Pittsburgh, Pa. (includes Allegheny, Beaver, Washington, and Westmoreland Counties)	6280	2
Pittsfield, Mass. (includes Berkshire County)	6320	1
Portland, Maine (includes Cumberland County)	6400	2
Portland, Oreg-Wash. (includes Clackamas, Multnomah, and Washington Counties, Oreg., and Clark County, Wash.)	6440	3
Providence-Pawtucket-Warwick, R.I. (includes entire State)	6480	2
Provo-Orem, Utah (includes Utah County)	6520	2
Pueblo, Colo. (includes Pueblo County)	6560	2
Racine, Wis. (includes Racine County)	6600	2
Raleigh, N.C. (includes Wake County)	6640	2
Reading, Pa. (includes Berks County)	6680	1
Reno, Nev. (includes Washoe County)	6720	2
Richmond, Va. (includes Richmond City and Chesterfield, Henrico, and Hanover Counties)	6760	2
Roanoke, Va. (includes Roanoke City and Roanoke County)	6800	2
Rochester, Minn. (includes Olmsted County)	6820	1
Rochester, N.Y. (includes Monroe, Livingston, Orleans, and Wayne Counties)	6840	2
Rockford, Ill. (includes Winnebago and Boone Counties)	6880	2
Sacramento, Calif. (includes Sacramento, Placer, and Yolo Counties)	6920	3
Saginaw, Mich. (includes Saginaw County)	6960	2
St. Joseph, Mo. (includes Buchanan County)	7000	1
St. Louis, Mo.-Ill. (includes St. Louis City and Jefferson, St. Charles, St. Louis, and Franklin Counties, Mo., and Madison and St. Clair Counties, Ill.)	7040	2
Salem, Oreg. (includes Marion and Polk Counties)	7080	2
Salinas-Monterey, Calif. (includes Monterey County)	7120	3
Salt Lake City, Utah (includes Salt Lake and Davis Counties)	7160	2
San Angelo, Tex. (includes Tom Green County)	7200	1
San Antonio, Tex. (includes Bexar and Guadalupe Counties)	7240	3
San Bernardino-Riverside-Ontario, Calif. (includes Riverside and San Bernardino Counties)	7280	3
San Diego, Calif. (includes San Diego County)	7320	2
San Francisco-Oakland, Calif. (includes Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties)	7360	3
San Jose, Calif. (includes Santa Clara County)	7400	2
Santa Barbara, Calif. (includes Santa Barbara County)	7480	2
Santa Rosa, Calif. (includes Sonoma County)	7500	2
Savannah, Ga. (includes Chatham County)	7520	3
Scranton, Pa. (includes Lackawanna County)	7560	1
Seattle-Everett, Wash. (includes King and Snohomish Counties)	7600	3
Sherman-Denison, Tex. (includes Grayson County)	7640	1
Shreveport, La. (includes Bossier and Caddo Parishes)	7680	2
Sioux City, Iowa-Nebr. (includes Woodbury County, Iowa, and Dakota County, Nebr.)	7720	2
Sioux Falls, S. Dak. (includes Minnehaha County)	7760	1
South Bend, Ind. (includes St. Joseph and Marshall Counties)	7800	2
Spokane, Wash. (includes Spokane County)	7840	2
Springfield, Ill. (includes Sangamon County)	7880	2
Springfield, Mo. (includes Greene County)	7920	2
Springfield, Ohio (includes Clark County)	7960	2
Springfield-Chicopee-Holyoke, Mass. (includes Hampden and Hampshire Counties, Mass., and Tolland County Conn.)	8000	2
Steubenville-Weirton, Ohio-W. Va. (includes Jefferson County, Ohio, and Brooke and Hancock Counties, W. Va.)	8040	1
Stockton, Calif. (includes San Joaquin County)	8120	3
Syracuse, N.Y. (includes Madison, Onondaga, and Oswego Counties)	8160	2
Tacoma, Wash. (includes Pierce County)	8200	2
Tallahassee, Fla. (includes Leon County)	8240	2
Tampa-St. Petersburg, Fla. (includes Hillsborough and Pinellas Counties)	8280	2
Terre Haute, Ind. (includes Vigo, Clay, Sullivan, and Vermillion Counties)	8320	2
Texarkana, Tex.-Ark. (includes Bowie County, Tex., and Miller County, Ark.)	8360	2
Toledo, Ohio-Mich. (includes Lucas and Wood Counties, Ohio, and Monroe County, Mich.)	8400	2
Topeka, Kans. (includes Shawnee County)	8440	2
Trenton, N.J. (includes Mercer County)	8480	2
Tucson, Ariz. (includes Pima County)	8520	2
Tulsa, Okla. (includes Creek, Osage, and Tulsa Counties)	8560	2
Tuscaloosa, Ala. (includes Tuscaloosa County)	8600	2
Tyler, Tex. (includes Smith County)	8640	1
Utica-Rome, N.Y. (includes Herkimer and Oneida Counties)	8680	1
Vallejo-Napa, Calif. (includes Solano and Napa Counties)	8720	3
Vineland-Millville-Bridgeton, N.J. (includes Cumberland County)	8760	2
Waco, Tex. (includes McLennan County)	8800	2
Waterbury, Conn. (includes Litchfield County)	8880	2
Washington, D.C.-Md.-Va. (includes District of Columbia, Montgomery and Prince Georges Counties, Md., Alexandria, Fairfax, and Falls Church Cities, and Arlington, Fairfax, Loudoun, and Prince William Counties, Va.)	8840	
Waterloo, Iowa (includes Black Hawk County)	8920	
West Palm Beach, Fla. (includes Palm Beach County)	8960	2
Wheeling, W. Va.-Ohio (includes Marshall and Ohio Counties, W. Va., and Belmont County, Ohio)	9000	1
Wichita, Kans. (includes Sedgwick and Butler Counties)	9040	2
Wichita Falls, Tex. (includes Archer and Wichita Counties)	9080	2
Wilkes-Barre-Hazleton, Pa. (includes Luzerne County)	9120	1
Wilmington, Del.-N.J.-Md. (includes New Castle County, Del., Salem County, N.J., and Cecil County, Md.)	9160	2
Wilmington, N.C. (includes New Hanover and Brunswick Counties)	9200	2
Worcester, Mass. (includes Worcester County)	9240	2
York, Pa. (includes York and Adams Counties)	9280	1
Youngstown-Warren, Ohio (includes Mahoning and Trumbull Counties)	9320	2

RATING OF REMAINDER OF STATE TERRITORIES (EXCLUSIVE OF SMSA'S)

State	Statistical code	Rate territory	Counties and independent cities which are in SMSA's listed above (see SMSA list for rate territory)
Alabama	401	1	Baldwin, Elmore, Etowah, Jefferson, Limestone, Madison, Mobile, Montgomery, Russell, Shelby, Tuscaloosa, Walker.
Alaska	002	2	None.
Arizona	009	2	Maricopa, Pima.
Arkansas	005	1	Crawford, Crittenden, Jefferson, Miller, Pulaski, Saline, Sebastian.
California	093	2	Alameda, Contra Costa, Fresno, Kern, Los Angeles, Marin, Monterey, Napa, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, Ventura, Yolo.
Colorado	869	2	Adams, Arapahoe, Boulder, Denver, El Paso, Jefferson, Pueblo.
Connecticut	109	1	All counties except Windham.
Delaware	310	1	New Castle.
Florida	041	2	Alachua, Broward, Dade, Duval, Escambia, Hillsborough, Leon, Orange, Palm Beach, Pinellas, Santa Rosa, Seminole.
Georgia	413	1	Bibb, Chatham, Chattahoochee, Clayton, Cobb, De Kalb, Dougherty, Fulton, Gwinnett, Houston, Muscogee, Richmond, Walker.
Hawaii	915	1	Honolulu.
Idaho	191	2	Ada.
Illinois	651	1	Boone, Champaign, Cook, Du Page, Henry, Kane, Lake, McHenry, McLean, Macon, Madison, Peoria, Rock Island, St. Clair, Sangamon, Tazewell, Will, Winnebago, Woodford.
Indiana	518	1	Allen, Boone, Clark, Clay, Dearborn, Delaware, Floyd, Hamilton, Hancock, Hendricks, Johnson, Lake, Madison, Marion, Marshall, Morgan, Porter, St. Joseph, Shelby, Sullivan, Tippecanoe, Vanderburgh, Vermillion, Vigo, Warrick.
Iowa	719	1	Black Hawk, Dubuque, Linn, Polk, Pottawattamie, Scott, Woodbury.
Kansas	721	1	Butler, Kearny, Sedgwick, Shawnee, Wyandotte.
Kentucky	421	1	Boone, Boyd, Campbell, Daviess, Henderson, Jefferson, Kenton.
Louisiana	622	1	Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Orleans, Ouachita, St. Bernard, St. Tammany.
Maine	123	1	Androscoggin, Cumberland.
Maryland	325	1	Ann Arundel, Baltimore (city and county), Carroll, Cecil, Harford, Howard, Montgomery, Prince Georges.

State	Statistical code	Rate territory	Counties and independent cities which are in SMSA's listed above (see SMSA list for rate territory)
Massachusetts	125	2	Berkshire, Bristol, Essex, Hampden, Hampshire, Middlesex, Norfolk Plymouth, Suffolk, Worcester.
Michigan	526	2	Bay, Clinton, Eaton, Genesee, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Macomb, Monroe, Muskegon, Oakland, Ottawa, Saginaw, Washtenaw, Wayne.
Minnesota	527	1	Anoka, Clay, Dakota, Hennepin, Olmsted, Ramsey, St. Louis, Washington.
Mississippi	429	1	Harrison, Hinds, Rankin.
Missouri	729	1	Boone, Buchanan, Cass, Clay, Franklin, Greene, Jackson, Jefferson, Platte, St. Charles, St. Louis, St. Louis City.
Montana	830	1	Cascade, Yellowstone.
Nebraska	731	1	Dakota, Douglas, Lancaster, Sarpy.
Nevada	093	2	Clark, Washoe.
New Hampshire	133	1	Hillsborough, Merrimack, Rockingham.
New Jersey	234	2	All counties except Cape May, Hunterdon, Middlesex, Monmouth, Ocean, Somerset, Sussex.
New Mexico	635	2	Bernalillo.
New York	023	1	Albany, Bronx, Broome, Erie, Herkimer, Kings, Livingston, Madison, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Oswego, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Suffolk, Tioga, Wayne, Westchester.
North Carolina	437	1	Brunswick, Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, New Hanover, Orange, Randolph, Union, Wake, Yadkin.
North Dakota	833	1	Cass.
Ohio	539	1	Allen, Belmont, Butler, Clark, Clermont, Cuyahoga, Delaware, Franklin, Geauga, Greene, Hamilton, Jefferson, Lake, Lawrence, Loran, Lucas, Mahoning, Medina, Miami, Montgomery, Pickaway, Portage, Preble, Putnam, Richland, Stark, Summit, Trumbull, Van Wert, Warren, Wood.
Oklahoma	641	1	Canadian, Cleveland, Comanche, Creek, Le Flore, Oklahoma, Osage, Sequoyah, Tulsa.
Oregon	105	2	Clackamas, Lane, Marion, Multnomah, Polk, Washington.
Pennsylvania	342	1	Adams, Allegheny, Beaver, Berks, Blair, Bucks, Cambria, Chester, Cumberland, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Northampton, Perry, Philadelphia, Somerset, Susquehanna, Washington, Westmoreland, York.
Puerto Rico	027	2	Assign all to rate territory 2.
Rhode Island	014	2	All counties in SMSA's.
South Carolina	445	2	Aiken, Berkeley, Charleston, Greenville, Lexington, Pickens, Richland.
South Dakota	846	1	Minnehaha.
Tennessee	447	1	Anderson, Blount, Davidson, Hamilton, Knox, Shelby, Sumner, Wilson.
Texas	649	1	Archer, Bexar, Bowie, Brazoria, Brazos, Cameron, Collin, Dallas, Denton, Ector, Ellis, El Paso, Fort Bend, Grayson, Guadalupe, Harris, Hidalgo, Jefferson, Johnson, Jones, Kaufman, Kinney, Liberty, Lubbock, McLennan, Midland, Montgomery, Nueces, Orange, Potter, Randall, Rockwall, San Patricio, Smith, Tarrant, Taylor, Tom Green, Travis, Webb, Wichita.
Utah	849	1	Davis, Salt Lake, Utah, Weber.
Vermont	150	1	None.
Virginia	351	1	Alexandria, Amherst, Arlington, Campbell, Chesapeake, Chesterfield, Dinwiddie, Fairfax (City and County), Falls Church, Hanover, Hampton, Henrico, Hopewell, Loudoun, Lynchburg, Newport News, Norfolk, Petersburg, Portsmouth, Prince George, Prince William, Richmond, Roanoke (city and county), Virginia Beach, York, Colonial Heights.
Washington	053	2	Clark, King, Pierce, Snohomish, Spokane.
West Virginia	354	1	Brooke, Cabell, Hancock, Kanawha, Marshall, Ohio, Wayne.
Wisconsin	555	1	Brown, Calumet, Dane, Douglas, Kenosha, La Crosse, Milwaukee, Ozaukee, Racine, Washington, Waukesha, Outagamie, Winnebago.
Wyoming	085	2	None.

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