

contracts to provide maintenance or training or both, the software must be updated to incorporate changes or revisions in legislation, regulations, handbooks, notices or HUD electronic transmission data format requirements.

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

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

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

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

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

Sec.

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COOPERATIVE MANAGEMENT HOUSING INSURANCE AND DISTRIBUTIVE SHARES

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213.501 Savings clause.

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

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

Subpart A—Eligibility Requirements—Projects

§ 213.1 Eligibility requirements.

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

[61 FR 14405, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations—Projects

§213.251 Cross-reference.

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

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207.251 Definitions.

207.252 First, second, and third premiums.

207.254 Form of endorsement.

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

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

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

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

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

§213.252 Definitions.

The definitions contained in §213.1 shall apply to this subpart and in addi-

tion 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 as are approved by the Commissioner.

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

§213.253 Premiums upon initial endorsement.

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

(b) *Purchasing cooperatives*. The provisions of paragraph (a) of this section do not apply to the mortgage or a purchasing nonprofit cooperative housing

corporation or trust where such mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsored Project to such purchasing nonprofit cooperative housing corporation or trust.

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

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

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

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

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

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

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

mortgage is paid in full prior to the date of such first principal payment, the first and second premiums collected shall be adjusted so that the aggregate of the two premiums shall equal the sum of:

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

(ii) One-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial endorsement to the date the mortgage was paid in full.

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

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

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

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

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

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

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

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

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

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

(d) *Supplementary loan; insurance of advances.* The provisions of paragraph 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 prin-

cipal 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) of this section shall apply to Existing Construction not involving insurance of advances but involved Commissioner approved or required repairs, improvements, alterations and additions.

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

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

(a) Where a mortgage is endorsed for insurance pursuant to the sale of an Investor Sponsor Project or covers Existing Construction not involving Commissioner approved or required repairs,

improvements, alterations and additions, the mortgagee, on the date of the insurance endorsement, shall pay a first premium equal to one-half of one percent of the principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment. On the anniversary of the first principal payment, this first premium shall be adjusted to equal one-half of one percent of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

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

§ 213.258 Subsequent annual premiums.

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

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

§ 213.259 Computation of subsequent annual premiums.

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

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

All of the provisions of §§ 213.253 through 213.259 governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act, except

that all mortgage insurance premiums due on such mortgages in accordance with §§ 213.253 through 213.259 shall be calculated on the basis of one percent.

[42 FR 59675, Nov. 18, 1977]

§ 213.260 Allowable methods of premium payment.

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

§ 213.265 Modifications and consolidations.

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

[37 FR 8662, Apr. 29, 1972]

§ 213.266 Initial insurance endorsement.

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

§ 213.266a Insurance fund obligations.

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

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

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transferred to the Cooperative Management Housing Insurance Fund.

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

§213.267 Effect of insurance endorsement.

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

§213.268 Final insurance endorsement.

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

§213.269 Endorsement of supplementary loans.

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

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

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

but shall elect which method it desires to pursue.

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

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

(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

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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.

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ing 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—Individual Properties Released From Project Mortgage; Expiring Program

§213.501 Savings clause.

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

[61 FR 60160, Nov. 26, 1996]

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

Sec. 219.1 Program operations. 219.2 Savings provision.

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

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

§219.1 Program operations.

Effective May 1, 1996, the Flexible Subsidy Program for Troubled Projects