

§ 201.25 Charges to borrower to obtain loan.

(a) *Fees and charges that may be financed in a property improvement loan.* The Secretary will establish a list of fees and charges that may be included in a property improvement loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(b) *Fees and charges that may be financed in a manufactured home loan.* The Secretary will establish a list of fees and charges that may be included in a manufactured home loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(c) *Fees and charges that may not be financed.* The Secretary will establish a list of fees and charges incurred by the lender that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, or any other party to the loan transaction.

(d) *Fees and charges that may not be paid.* Neither the lender nor the borrower may pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker, or any other party in connection with the origination of a loan insured under this part.

[61 FR 19798, May 2, 1996]

§ 201.26 Conditions for loan disbursement.

(a) *Property improvement loans.* The lender shall comply with the following applicable requirements before disbursing the proceeds of a property improvement loan.

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and

(ii) The interest of the borrower in the property is valid, through such

title or other evidence as are generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

(2) The proposed use of the loan proceeds shall be documented in accordance with the requirements of § 201.20(b)(1).

(3) Where the proceeds are to be used for an historic preservation loan, the lender shall ensure that the proposed improvements have been approved by the State Historic Preservation Officer in accordance with § 201.20(c).

(4) Where the proceeds are to be used for a fire safety equipment loan, the lender shall ensure that the proposed improvements have been approved by the State or local agency having jurisdiction over the fire safety requirements of health care facilities in accordance with § 201.20(c).

(5) In the case of a dealer loan, the lender shall obtain a completion certificate, on a HUD-approved form and signed by the borrower and the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that

(i) the improvements are eligible and have been completed in general accordance with the contract or cost estimate furnished to the lender, and

(ii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from the dealer as an inducement for the consummation of the transaction.

(6) In the case of a dealer loan made on or after December 7, 2001, the lender may disburse the loan proceeds solely to the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

(7) In the case of a dealer loan, the lender must conduct a telephone interview with the borrower before the disbursement of the loan proceeds. The lender, at minimum, must obtain an oral affirmation from the borrower to release funds to the dealer. The lender shall document the borrower's oral affirmation.

(8) For any property improvement loan, the lender shall provide the borrower with a written notice, to be

§ 201.26

24 CFR Ch. II (4-1-10 Edition)

signed by the borrower and retained in the loan file, that:

(i) States that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717; and

(iii) In the case of a direct loan, constitutes an acknowledgement of the borrower's postdisbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent in accordance with §§ 201.40(b) and (c).

(9) The lender shall assure that the loan file is complete and contains the note, security instrument, and copies of all other documents relating to the property improvement loan transaction.

(b) *Manufactured home loans.* The lender shall comply with the following applicable requirements before disbursing the proceeds of a manufactured home loan.

(1) The lender shall ensure that the borrower is eligible for a manufactured home loan in accordance with § 201.21(a).

(2) The lender shall assure that the loan file is complete, and shall obtain the following documents for retention in the loan file:

(i) A signed copy of the purchase contract between the borrower and the dealer or seller;

(ii) A copy of the manufacturer's invoice, where the loan involves the purchase of a new manufactured home;

(iii) Copies of itemized statements of other costs, fees and charges, whether paid by the borrower or financed with the loan proceeds; and

(iv) The note and security instrument and copies of all other documents relating to the loan transaction.

(v) The note, security instrument and copies of all other documents relating to the loan transaction.

(3) The lender shall obtain certifications from the borrower under applicable criminal and civil penalties for fraud and misrepresentation that:

(i) The manufactured home being financed with a manufactured home pur-

chase loan or combination loan will be occupied as the borrower's principal residence;

(ii) Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home will be placed on the lot and will be occupied as the borrower's principal residence within six months after the date of the loan;

(iii) The initial payment required under § 201.23 was made, and no part of the initial payment was borrowed from or otherwise advanced or paid to or for the benefit of the borrower by the dealer or seller, the manufacturer, or any other party to the transaction, and if any part of the initial payment was obtained through a gift or loan, the source of the gift or loan and the security for any such loan was disclosed on the credit application;

(iv) While any portion of the loan obligation on a manufactured home purchase loan is unpaid, the manufactured home may be moved only to a new site in compliance with § 201.21 (c) and (e), and only with the lender's prior approval;

(v) While any portion of the loan obligation on a combination loan is unpaid, the manufactured home will not be moved to a new site;

(vi) The borrower has paid the remaining unpaid balance on any other manufactured home loan secured by a different property, unless the prior approval of the Secretary is obtained for an exception to this requirement; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

(4) For any manufactured home purchase loan or combination loan involving the sale of a manufactured home by a dealer, the lender shall obtain a placement certificate, on a HUD-approved form and signed by the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) The manufactured homesite meets the requirements of § 201.21(e);

(ii) The structural integrity of the manufactured home was maintained

during the process of transporting the home to the borrower's homesite;

(iii) The manufactured home has been installed or erected on the homesite in accordance with the manufacturer's requirements for anchoring, support, stability and maintenance;

(iv) If the manufactured home is placed on a permanent foundation, such foundation has been constructed in accordance with the requirements of §201.21(c)(3);

(v) The dealer has performed the inspection and tests required under §201.21(c)(4) and has determined that the manufactured home has sustained no structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational;

(vi) Any initial payment required under §201.23 was made by the borrower, and no part of the initial payment was loaned, advanced, or paid to or for the benefit of the borrower by the manufacturer, dealer, or any other party to the loan transaction; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

(5) The lender shall obtain and file the certifications by local officials or a civil engineer which are required under §201.21(e) to document the suitability of the manufactured homesite.

(6) For any direct manufactured home purchase loan or combination loan involving the relocation of the manufactured home to a new homesite owned or leased by the borrower, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection to verify that:

(i) States that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

(ii) The manufactured home and any itemized options and appurtenances included in the purchase price of the home or to be financed with the loan

proceeds have been delivered and installed; and

(iii) The manufactured home has been properly erected or installed on the homesite without any apparent structural damage or other serious defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational.

(7) The lender shall provide the borrower with a written notice, to be signed by the borrower and retained in the loan file, that:

(i) States that the loan will be insured by the HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid; and

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

(8) Where a manufactured home purchase loan involves a manufactured home which is to be located on Indian trust or otherwise restricted lands, the lender shall obtain written permission from the trustee or the tribal authority who controls the site for the lender to repossess the home in the event of default by the borrower and acceleration of the loan.

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§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply with the requirements of this part. However, in no case shall the lender approve a dealer that is unable to meet the following minimum qualifications:

(i) *Net worth.* All property improvement and manufactured home dealers shall have and maintain a net worth of