

§ 201.40

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

(3) An existing insured property improvement loan or manufactured home loan may not be refinanced by a lender different from the originating or purchasing lender of record, unless the loan has been sold, assigned, or transferred to the new lender under paragraph (c) of this section and the Secretary has transferred insurance coverage for the loan under the applicable requirements of this paragraph.

(d) *Recovery shall not affect insurance coverage reserve account.* Amounts which may be recovered by the Secretary after payment of an insurance claim shall not be added to the amount of insurance coverage remaining in a lender's reserve account.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33407, Sept. 3, 1987; 54 FR 10537, Mar. 14, 1989; 56 FR 52434, Oct. 18, 1991; 61 FR 19799, May 2, 1996]

Subpart E—Loan Administration

§ 201.40 Post-disbursement loan requirements.

(a) *Discovery of misstatements of fact.* If, after a loan has been made, the lender discovers any material misstatement of fact or that the loan proceeds have been misused by the borrower, dealer or any other party, it shall promptly report this to the Secretary. In such case, the insurance of the loan shall not be affected unless such material misstatement of fact or misuse of loan proceeds was caused by or was knowingly sanctioned by the lender or its employees (see § 201.31(e)(3)), provided that the validity of any lien on the property has not been impaired.

(b) *Requirements on property improvement loans.* (1) After receiving the proceeds of a direct property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower shall submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) The improvements have been completed,

(ii) the amount borrowed has been spent on improvements eligible under § 201.20(b) and in accordance with the

contract or cost estimate furnished to the lender prior to disbursement of the loan proceeds, and

(iii) 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 any contractor or supplier as an inducement for the consummation of the loan transaction.

(2) The borrower shall submit the completion certificate promptly upon the work's completion, but not later than six months after the disbursement of the loan proceeds, with one six-month extension if necessary. If the borrower fails to submit the completion certificate within these time limits, an on-site inspection shall be conducted in accordance with paragraph (c) of this section.

(3) The borrower is not required to submit a completion certificate when the property improvement loan is made by or on behalf of a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, with the written approval of the borrower and based upon the percentage of work completed.

(c) *Inspection requirement on property improvement loans.* The lender or its agent shall conduct an on-site inspection on any property improvement loan where the principal obligation is \$7,500 or more, and on any direct property improvement loan where the borrower fails to submit a completion certificate as required under paragraph (b) of this section. On a dealer loan, the inspection shall be completed within 60 days after the date of disbursement. On a direct loan, the inspection shall be completed within 60 days after receipt of the completion certificate, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting the completion certificate. The purpose of the inspection is to verify the eligibility of the improvements and whether the work has been completed. If the borrower will not cooperate in permitting an on-site inspection, the lender shall report this fact to the Secretary.

(d) *Inspection requirement on dealer manufactured home loans.* For any manufactured home purchase loan or combination loan involving the sale of a manufactured home by a dealer, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection within 60 days after the date of disbursement to verify that:

- (1) The terms and conditions of the purchase contract have been met;
- (2) The manufactured home and any itemized options and appurtenances included in the purchase price of the home or financed with the loan proceeds have been delivered and installed; and
- (3) The placement certificate executed by the borrower and the dealer is in order.

(Approved by the Office of Management and Budget under control number 2502-0328)

[50 FR 43523, Oct. 25, 1985, as amended at 56 FR 52434, Oct. 18, 1991; 61 FR 19799, May 2, 1996]

§ 201.41 Loan servicing.

(a) *Generally.* The lender shall service loans in accordance with accepted practices of prudent lending institutions. It shall have adequate facilities for contacting the borrower in the event of default, and shall otherwise exercise diligence in collecting the amount due. The lender shall remain responsible to the Secretary for proper collection efforts, even though actual loan servicing and collection may be performed by an agent of the lender. The lender shall have an organized means of identifying, on a periodic basis, the payment status of delinquent loans to enable collection personnel to initiate and follow-up on collection activities, and shall document its records to reflect its collection activities on delinquent loans.

(b) *Partial payments.* The lender shall accept any partial payment (inclusive of late charges) under an executed modification agreement or an acceptable repayment plan, and either apply it to the borrower's account or hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment, they shall be applied to the borrower's account, thus advancing the

date of the oldest unpaid installment. If a partial payment is received more than 60 days after the date of default and was not submitted under a repayment plan or a modification agreement, the partial payment may be returned to the borrower, with a letter of explanation.

§ 201.42 Bankruptcy, insolvency or death of borrower.

(a) *Bankruptcy or insolvency.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is involved in bankruptcy or insolvency proceedings, except that a proof of claim need not be filed if the court notifies the lender that the borrower has no assets and a proof of claim should not be filed. The notice of bankruptcy and a copy of the proof of claim (or the notice from the court that a proof of claim is not required) shall be retained in the loan file.

(b) *Death of a borrower.* The lender shall file a proof of claim with the court having jurisdiction when the lender has timely information that a borrower is deceased, unless the lender determines that there will not be a probate proceeding. A copy of the proof of claim (or documentation as to why a proof of claim was not filed) shall be retained in the loan file.

(c) *Responsibility of the lender after insurance claim is filed.* After the Secretary pays an insurance claim, the Secretary will notify the bankruptcy or probate court, as appropriate, that the loan has been assigned to the United States and will request substitution as the party to whom the claim is owed. Until the insurance claim is paid, the lender shall take all steps necessary to protect the interests of the holder of the note in any bankruptcy or probate proceeding.

[54 FR 36266, Aug. 31, 1989]

§ 201.43 Administrative reports and examinations.

The Secretary may call upon a lender for any reports deemed necessary in connection with the regulations in this part and may inspect the loan files, records, books and accounts of the lender as they pertain to the loans reported for insurance.