

§ 266.315

(d) *Requirements applicable to both periodic advances and insurance upon completion cases—(1) Inspections.* The HFA must inspect projects under this part at such times during construction, substantial rehabilitation, or repairs as the HFA determines. The inspections must be conducted to assure compliance with plans and specifications, work write-ups, and other contract documents.

(2) *Approval of advances.* At all times, the loan must be kept in balance, and advances approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. In approving advances, HFAs must make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

(3) *Cost certification.* In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability.* Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion.* The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow.* The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be

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remedied within the time period required by the HFA.

(e) *Mortgagee of record.* The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

§ 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

§ 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

- (a) In fee simple;
- (b) Under a renewable lease of not less than 99 years; or
- (c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

§ 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

§ 266.405 Title.

(a) *Eligibility of title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence.* The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

§ 266.410 Mortgage provisions.

(a) *Form.* The mortgage and note must be executed on a form approved

by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a “change in use” as that term is employed in the mortgage since the property will continue to have a residential use both before and after conversion.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that 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. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and

owner agree to a modification of the terms of the mortgage (*e.g.*, to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§ 266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§ 266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner’s