

## § 4001.102

(2) Had available funds at the time payment on the mortgage or debt was due that could pay the mortgage or debt without undue hardship; and

(3) The debt was not subject to a bona fide dispute.

*Mortgage* has the same meaning as provided in 24 CFR 203.17(a)(1).

*Mortgagee* has the same meaning as provided in 24 CFR 203.251(f).

*Mortgagor* has the same meaning as provided in 24 CFR 203.251(e).

*Premium pricing* means the price for the sale of a mortgage loan with an above market rate of interest.

*Prepayment penalties* mean such amounts as defined in 12 CFR 226.32(d)(6) of the Federal Reserve Board's Regulation Z (Truth in Lending).

*Primary residence* means the dwelling where the mortgagor maintains his or her permanent place of abode and typically spends the majority of the calendar year. A mortgagor can only have one primary residence.

*Program mortgage* means the mortgage into which the existing senior mortgage is refinanced.

*Related party* of a person means any of the following or another person acting on behalf of the person or any of the following—

(1) The person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse;

(2) Any entity of which 25 percent or more of any class of voting securities is owned, controlled or held in the aggregate by the person or the persons referred to in paragraph (1); and

(3) Any entity of which the person or any person referred to in paragraph (1) serves as a trustee, general partner, limited partner, managing member, or director.

*Secretary* means the Secretary of Housing and Urban Development.

*Total monthly mortgage payment* means the sum of:

(1) Principal and interest, as determined on a fully indexed and fully amortized basis; and

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(2) *Escrowed amounts.* (i) The monthly required amount collected by or on behalf of the mortgagee for real estate taxes, premiums for required hazard and mortgage insurance, homeowners' association dues, ground rent, special assessments, water and sewer charges and other similar charges required by the note or security instrument; or

(ii) For mortgages not subject to escrow deposits,  $\frac{1}{12}$  of the estimated annual costs for items listed in paragraph (2)(i) of this definition.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

### Subpart B—Eligibility Requirements and Underwriting Procedures

#### § 4001.102 Cross-reference.

(a) All of the provisions of 24 CFR part 203, subpart A, concerning eligibility requirements of mortgages covering one-family dwellings under section 203 of the National Housing Act (12 U.S.C. 1709) apply to mortgages on one-family dwellings to be insured under section 257 of the National Housing Act (12 U.S.C. 1701z-22), except the following provisions: 203.7 Commitment Process; 203.10 Informed consumer choice for prospective FHA mortgagors; 203.12 Mortgage insurance on proposed or new subdivisions; 203.14 Builder's warranty; 203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes; 203.17(d) Maturity; 203.18 Maximum mortgage amounts; 203.18a Solar-energy system; 203.18b Increased mortgage amount; 203.18c One-time or up-front MIP excluded from limitations on maximum mortgage amounts; 203.18d Minimum principal loan amount; 203.19 Mortgagor's minimum investment; 203.20 Agreed interest rate; 203.29 Eligible mortgage in Alaska, Guam, Hawaii or the Virgin Islands; 203.32 Mortgage lien; 203.37a Sale of property; 203.42 Rental properties; 203.43 Eligibility of miscellaneous types of mortgages; 203.43a Eligibility of mortgages covering housing in certain neighborhoods; 203.43d Eligibility of mortgages in certain communities; 203.43e Eligibility of mortgages covering houses in

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federally impacted areas; 203.43g Eligibility of mortgages in certain communities; 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act; 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act; 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation Indians; 203.44 Eligibility of advances; 203.45 Eligibility of graduated payment mortgages; 203.47 Eligibility of growing equity mortgages; 203.49 Eligibility of adjustable rate mortgages; 203.50 Eligibility of rehabilitation loans; 203.51 Applicability; and 203.200–203.209 Insured Ten-Year Protection Plans (Plan).

(b) For the purposes of this subpart, all references in 24 CFR part 203, subpart A, to section 203 of the Act shall be construed to refer to section 257 of the Act. Any references in 24 CFR part 203, subpart A, to the “Mutual Mortgage Insurance Fund” shall be deemed to be to the Home Ownership Preservation Entity Fund, and any references to “the Commissioner” shall be deemed to be to the Board or the Commissioner (as the context may require).

(c) If there is any conflict in the application of any requirement of 24 CFR part 203, subpart A, to this part the provisions of this part shall control.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

### § 4001.104 Eligible mortgages.

A mortgage eligible to be refinanced under section 257 of the Act must:

(a) Have been originated on or before January 1, 2008;

(b) Be secured by a property owned and occupied by the mortgagor as his or her primary residence, and be the only residence in which the mortgagor has any present ownership interest; and

(c) Meet such other requirements as the Board may adopt.

### § 4001.106 Eligible mortgagors.

A mortgagor shall be eligible to refinance his or her existing mortgages under section 257 of the Act only if:

(a)(1) The mortgagor had, on March 1, 2008, a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 per-

cent of the mortgagor’s monthly gross income; or

(2) If the mortgagor’s existing senior mortgage or existing subordinate mortgage, if any, is an adjustable-rate mortgage that by its terms resets after March 1, 2008, the mortgagor has a total monthly mortgage payment (based on mortgages outstanding on March 1, 2008) of more than 31 percent of the mortgagor’s monthly gross income calculated as of the date the mortgagor first applies for the Program mortgage;

(b) The mortgagor does not have an ownership interest in any other residential property;

(c) The mortgagor has not been convicted of fraud under federal or state law in the past 10 years;

(d) The mortgagor certifies that the mortgagor has not intentionally defaulted on any mortgage or debt and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for purposes of obtaining any Program mortgage; and

(e) The mortgagor meets such other requirements as the Board may adopt.

[74 FR 621, Jan. 7, 2009]

### § 4001.108 Eligible properties.

(a) A mortgage may be insured under the Program only if the property that is to be the security for the mortgage is a 1-to-4 unit residence.

(b) The following property types are eligible to secure a mortgage insured under the Program:

(1) Detached and semi-detached dwellings;

(2) A condominium unit;

(3) A cooperative unit; or

(4) A manufactured home that is permanently affixed to realty and is treated as realty under applicable state law except state taxation law.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

### § 4001.110 Underwriting.

A mortgage may be insured under the Program only if the following conditions are met:

(a) *Loan-to-value and income thresholds.* The loan-to-value (LTV), payment-to-income, and debt-to-income