§ 241.615 Certification of cost requirements.

(a) Certification agreement. The lender shall submit with the application an agreement on a form prescribed by the Commissioner and executed by the borrower and the lender.

(b) Certificate and adjustment. No loan shall be insured unless:

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(c) Cost computation. The term actual cost of the improvements shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expenses approved by the Commissioner.

(d) Statement of facts. Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) Incontestability. Upon the Commissioner’s approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) Records. The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the contractor to keep similar records and, upon request by the Commissioner, both shall make available for examination such records, including any collateral agreements.

(g) Certificate of public accountant. Where required by the Commissioner, each certificate of actual cost shall be