

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT AND OTHER AUTHORITIES

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

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AUTHORITY: 12 U.S.C. 1703; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

SOURCE: 50 FR 43523, Oct. 25, 1985, unless otherwise noted.

Subpart A—General

§ 201.1 Purpose.

These regulations implement the provisions of section 2 of title I of the National Housing Act (12 U.S.C. 1703). They contain the requirements under which an approved financial institution may obtain insurance on loans made for the alteration, repair or improvement of property, for the purchase of a manufactured home and/or the lot on which to place such home, for the purchase and installation of fire safety equipment in existing health care facilities, and for the preservation of historic structures. The insurance granted by the Secretary of Housing and Urban Development shall be available only for loans involving property located within a State, as that term is defined in § 201.2. The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio, as reflected in the

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total amount of insurance coverage contained at any time in an insurance coverage reserve account established by the Secretary, less amounts for insurance claims paid. As limited by the amount of insurance coverage in such a reserve account, the insurance can cover up to 90 percent of the loss of any individual loan.

[50 FR 43523, Oct. 25, 1985, as amended at 61 FR 19795, May 2, 1996]

§ 201.2 Definitions.

As used in the regulations in this part the term:

Act means the National Housing Act, 12 U.S.C. 1703.

Actuarial method means the method of allocating payments made on a loan between the outstanding balance of the principal amount borrowed and the interest due on a loan obligation, under which a payment is applied first to the accrued interest, and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the obligation.

Borrower means one who applies for and receives a loan insured under this part. The term may also include any co-maker or co-signer or any assumptor who is obligated for the repayment of a loan obligation insured under this part.

Combination loan means a loan made for the purchase or refinancing in a single transaction of a manufactured home and a manufactured home lot, and may also include a garage, patio, carport, or other comparable appurtenance.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, *dealer* means one who engages in the business of manufactured home retail sales.

Dealer loan means a loan where a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. In the case of a property improvement loan, 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. In the case of a manufactured home loan, the lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

Debtor means the borrower, any co-maker or co-signer, and any assumptor who is liable for the repayment of a defaulted loan obligation insured under this part.

Default means a failure by the borrower to make any payment due under the note, when such failure continues for a period of 30 days. For the purpose of these regulations, the “date of default” shall be considered as 30 days after the first failure to make an installment payment on the note which is not covered by subsequent payments, when applied to the overdue installments in the order in which they became due.

Direct loan means a loan for which a borrower makes application directly to a lender without any assistance from a dealer. The credit application, signed by the borrower, may be filled out by the borrower or by a person acting at the direction of the borrower who does not have a financial interest in the loan transaction. The lender may disburse the loan proceeds solely to the borrower or jointly to the borrower and other parties to the transaction. If a dealer takes legal action required by State law in order for the lender to obtain a valid and enforceable lien against the property, such action by the dealer will not convert an otherwise direct loan to a dealer loan.

Discount points means a fee charged by the lender, separate from interest but part of the total finance charges on the loan, that is part of the lender’s total yield on the loan needed to maintain a competitive position with other types of investments. One discount point equals one percent of the principal amount of the loan. As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent relationship.

Existing structure means a dwelling, including a manufactured home, that was completed and occupied at least 90 days prior to an application for a Title I loan, or a nonresidential structure

that was a completed building with a distinctive functional use prior to an application for a Title I loan. However, these occupancy and completion requirements shall not apply to:

(1) Loans having a principal obligation of \$1000 or less; or

(2) Residential structures which have been damaged by conditions determined by the President to warrant relief under the provisions of title 42, chapter 68, of the United States Code.

Fire safety equipment loan means a loan made to finance the purchase and installation of any device or construction feature which is recognized in the latest edition of the Department of Housing and Urban Development's Minimum Property Standards for Care Type Housing (HUD Handbook 4920.1) or the Fire Safety Code of the National Fire Protection Association, and which is designed to reduce the risk of death, personal injury, or property damage resulting from a fire in a health care facility.

Furniture means movable articles of personal property relating to a home or dwelling, such as beds, chairs, sofas, lamps, tables, rugs, etc.; however, furniture does not include:

(1) Items built into the home or dwelling such as wall-to-wall carpeting or heating or cooling equipment; or

(2) Large appliances such as refrigerators, ovens, ranges, dishwashers, clothes washers or clothes dryers.

Health care facility means a proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State or by the municipality or other political subdivision in which the facility is located, and operated as one or more of the following:

(1) A nursing home for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services performed under the general direction of persons licensed by the law of the State where the facility is located to provide such care or services;

(2) An intermediate health care facility for the accommodation of persons who, because of incapacitating infirmities, require minimum but contin-

uous care, but not continuous medical care or nursing services;

(3) An extended health care facility for inpatient care for convalescents or chronic disease patients who require skilled nursing care and related medical services; or

(4) Other comparable health care facility.

Historic preservation loan means a loan to finance the preservation (restoration or rehabilitation) of an historic residential structure which is listed on the National Register of Historic Places or which is certified by the Secretary of the Interior as conforming with National Register criteria.

Lender means a financial institution that:

(1) Holds a valid Title I contract of insurance and is approved by the Secretary under 24 CFR part 202 to originate, purchase, hold, service, and/or sell loans insured under this part; or

(2) Is under suspension or holds a Title I contract of insurance that has been terminated, but that remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

Loan means a disbursement of proceeds (funds) or an advance of credit to or for the benefit of a borrower who promises to repay the principal amount of such disbursement or advance, plus interest, if any, at a stated annual rate over time, with the borrower's obligation evidenced by the borrower's execution of a note. *Loan* also means a purchase by a lender of a note evidencing such obligation, or a refinancing of an existing obligation with or without an additional disbursement of proceeds or advance of credit.

Manufacturer's invoice means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis

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or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify on the invoice, or on a supplement which is attached to and made a part of the invoice, as follows:

The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (1) The wholesale (base) prices for the manufactured home and itemized options, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than nominal value which will inure to the benefit of the dealer and/or home purchaser at any date; and (4) the manufacturer has not made and will not make any payments to or for the benefit of the dealer and/or home purchaser that are not disclosed on this invoice or invoice supplement.

Manufactured home means a transportable structure, comprised of one or more modules, each built on a permanent chassis, with or without a permanent foundation, designed for occupancy as a principal residence by a single family. A new manufactured home shall comply with the minimum property standards prescribed by the Secretary to assure its livability and durability that are published as the Manufactured Home Construction and Safety Standards implementing the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5426, at 24 CFR part 3280. To qualify for a manufactured home loan insured under this part, an existing manufactured home must have been constructed in accordance with standards published at 24 CFR part 3280 and must meet standards similar to the minimum property standards applicable to existing homes insured under title II of the Act, as prescribed by the Secretary.

Manufactured home improvement loan means a loan made to finance the alteration, repair or improvement of an existing manufactured home which is classified as personalty by the State or

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locality in which the property is located. The proceeds of a manufactured home improvement loan may also be used for improvements to the home-site, as long as the borrower is the owner of the home and the underlying real estate.

Manufactured home loan means a loan for the purchase or refinancing of a manufactured home and/or the lot on which to place such home. Unless otherwise indicated, the term includes manufactured home purchase loans, manufactured home lot loans, and combination loans.

Manufactured home lot loan means a loan for the purchase or refinancing of a portion of land acceptable to the Secretary as a manufactured home lot. A manufactured home lot may consist of platted or unplatted land, a lot in a recorded or unrecorded subdivision or in an improved area of such subdivision, or a lot in a planned unit development. A manufactured home lot may also consist of an interest in a manufactured home condominium project (including any interest in the common areas) or a share in a cooperative association which owns and operates a manufactured home park.

Manufactured home purchase loan means a loan for the purchase or refinancing of a manufactured home exclusive of any lot or site, and may also include a garage, patio, carport, or other comparable appurtenance.

Multifamily property improvement loan means a loan to finance the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families. The multifamily structure may not be owned by a corporation, partnership, or trust, unless the prior approval of the Secretary is obtained for an exception to this requirement.

Nonresidential property improvement loan means a loan made to finance the construction of a new exclusively nonresidential structure or the alteration, repair or improvement of an existing structure that is nonresidential. Such a structure may be temporarily used for residential purposes while the borrower constructs a new dwelling to replace a dwelling previously occupied by the borrower that was destroyed or

damaged by conditions determined by the President to warrant relief under the provisions of title 42, chapter 68, of the U.S.C., provided that the credit application is filed within one year from the date of such a determination.

Note means the written instrument evidencing the borrower's signature to a promise to repay the principal indebtedness and to pay any interest due on a loan, whether the instrument is separate from or included within another document, and unless otherwise specified means also any security instrument with respect to that loan obligation.

Owner means a person, including a borrower, who has title in whole or in part to the property which is the subject of a loan transaction.

Principal residence means a home where the borrower expects to live at least nine months of the year.

Property improvement loan means a loan made to finance actions or items that substantially protect or improve the basic livability or utility of a property. Unless otherwise indicated, the term includes single family, multifamily and nonresidential property improvement loans; manufactured home improvement loans where the home is classified as personalty; historic preservation loans; and fire safety equipment loans in existing health care facilities.

Rehabilitation means the process of returning an historic residential structure to a state of utility, through repair or alteration, which makes possible an efficient contemporary use. In rehabilitation, those portions of the property important in illustrating historic, architectural and cultural values are preserved or restored.

Restoration means the process of accurately recovering the form and details of an historic residential structure as it appeared at a particular period of time by removing later work and by replacing missing original work.

Security instrument means a properly recorded chattel mortgage, real estate mortgage or deed of trust, or conditional sales contract.

Single family property improvement loan means a loan to finance alterations, repairs and improvements to or

in connection with an existing structure used or to be used as a single family residence, including an existing one-family manufactured home that qualifies as real property in that the home is placed on a permanent foundation, the home and lot are classified as realty by the State or locality in which the property is located, and any loans on the property are secured by mortgages or deeds of trust covering the home and lot.

Solar energy system means any addition, alteration or improvement to an existing structure for single family or multifamily residential use which is designed to utilize wind or solar energy to reduce the energy requirements of that structure from other energy sources, and which complies with standards prescribed by the Secretary.

Special benefits means benefits other than volume incentives for dealers which a home manufacturer funds from general corporate revenues by charging them against corporate overhead and profit without changing the wholesale (base) price of a manufactured home (or series of homes), as reflected in the manufacturer's published wholesale (base) price list, and which are limited to payments by the manufacturer directly to:

(1) A financial institution to *buy down* or reduce the interest rate, discount points, or other fees or charges related to a lending agreement for a dealer's manufactured home inventory or *floor plan* financing needs; or

(2) One or more advertising media for all or part of the costs of advertising the manufacturer's homes, one or more dealer's services, and related manufactured home materials and products in such media.

State means any State of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

Volume incentives means specified dollar benefits to dealers under a published marketing and promotional plan, payable by a home manufacturer in cash or in kind in amounts or levels relating to the volume of sales of manufactured homes to dealers, other than

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benefits of a nominal value of less than \$10 per home, which:

(1) The manufacturer funds from general corporate revenues by including them in the prices quoted in the manufacturer's wholesale (base) price list and charging them against corporate overhead and profit;

(2) Whether or not available on an optional basis, do not increase or decrease the wholesale (base) prices for the sale of a specific home or options or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice, for a specific sale to a retail dealer;

(3) The manufacturer provides without creating a special product line where the cost of the benefits is the only substantive difference between the special product line and other essentially similar homes;

(4) Whether or not also of benefit to the ultimate purchaser, do not increase or decrease the retail price of the home;

(5) Are available to any dealer in a particular market area doing business with the manufacturer;

(6) The manufacturer provides only for volume sales of manufactured homes to dealers over a specified period of time;

(7) The plan provides in escalating and different amounts or levels related to either the number of homes (or modules) sold or the dollar value of such sales to a dealer, or some combination of such elements, in a specified period of time;

(8) Are structured so that only some of the dealer participants are expected to be paid the maximum benefits under the program, with substantial numbers of participants expected to receive less than the maximum amount or level of benefits; and

(9) Accrue for volume sales to a dealer over a specified period of time which is at least quarterly in length, and are paid not more frequently than quarterly.

Wholesale (base) price list means the price list or lists, as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) prices at the factory for specific

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models or series of manufactured homes and itemized options offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than nominal value which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 36263, Aug. 31, 1989; 56 FR 52428, Oct. 18, 1991; 57 FR 6480, Feb. 25, 1992; 57 FR 45246, Sept. 30, 1992; 60 FR 13836, Mar. 14, 1995; 61 FR 5206, Feb. 9, 1996; 61 FR 19795, May 2, 1996; 66 FR 56419, Nov. 7, 2001; 77 FR 51468, Aug. 24, 2012]

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan that has been made or for which a loan application has been approved before the effective date of the amendment.

[61 FR 19796, May 2, 1996]

§ 201.4 Rules of construction.

As used in this part, and unless the context indicates otherwise, words in the singular include the plural, and words in the plural include the singular.

[56 FR 52429, Oct. 18, 1991]

§ 201.5 Waivers.

Waiver of lender's noncompliance. The Secretary may waive a lender's noncompliance with any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has

substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

[56 FR 52429, Oct. 18, 1991, as amended at 61 FR 5206, Feb. 9, 1996]

§ 201.6 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this part, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0059)

[54 FR 39692, Sept. 27, 1989, as amended at 55 FR 420, Jan. 5, 1990]

§ 201.7 Qualified mortgage.

(a) *Qualified mortgage.* A mortgage insured under section 2 of title I of the National Housing Act (12 U.S.C. 1703), except for mortgage transactions exempted under § 203.19(c)(2), is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a).

(b) *Effect of indemnification on qualified mortgage status.* An indemnification demand or resolution of a demand that relates to whether the loan satisfied relevant eligibility and underwriting requirements at the time of consummation may result from facts that could allow a change to qualified mortgage status, but the existence of an indemnification does not per se remove qualified mortgage status.

[78 FR 75237, Dec. 11, 2013]

Subpart B—Loan and Note Provisions

§ 201.10 Loan amounts.

(a) *Property improvement loans.* (1) The total principal obligation for a property improvement loan shall not exceed the actual cost of the project plus any applicable fees and charges author-

ized at § 201.25(b), up to the following maximum loan amounts:

(i) Single family property improvement loans—\$25,000, except that a loan for a manufactured home that qualifies as real property shall be limited to \$17,500.

(ii) Multifamily property improvement loans—\$60,000 or an average of \$12,000 per dwelling unit, whichever is less.

(iii) Nonresidential property improvement loans—\$25,000.

(iv) Manufactured home improvement loans—\$7,500.

(v) Historic preservation loans—the lesser of \$15,000 per dwelling unit in a residential structure or \$45,000 per residential structure.

(vi) Fire safety equipment loans—\$50,000.

(2) No property improvement loan shall be approved where the total outstanding balance of all title I property improvement loans on the same property exceeds the maximum loan amount prescribed for that type of loan. If more than one type of property improvement loan is involved, the total outstanding balance of such loans on a particular property shall not exceed the maximum loan amount prescribed for the larger type of loan.

(b) *Manufactured home purchase loans.* (1) The total principal obligation for a loan to purchase a new manufactured home shall not exceed the sum of the following itemized amounts, up to a maximum of \$48,600:

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of wheels and axles (if not included in the freight charges);

(iv) The actual dealer's cost of skirting;

(v) The actual dealer's cost of a garage, carport, patio or other comparable appurtenance to the manufactured home, as approved by the Secretary;

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(vi) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer; and

(vii) Any applicable charges authorized at §201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home shall not exceed the lesser of the following amounts, up to a maximum of \$48,600:

(i) 95 percent of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and 95 percent of any itemized amounts allowed under paragraphs (b)(1)(iii) through (vii) of this section, if incurred; or

(ii) 95 percent of the purchase price of the home.

(3) The purchase price of a manufactured home financed with a manufactured home purchase loan shall include the retail cost to the borrower of all items set forth in the purchase contract, including any applicable charges authorized under §201.25(b).

(c) *Manufactured home lot loans.* The total principal obligation for a loan to purchase and, if necessary, develop a lot suitable for a manufactured home, including on-site water and utility connections, sanitary facilities, site improvements and landscaping, shall not exceed 95 percent of either the appraised value of the developed lot (as determined by a HUD-approved appraisal) or the total of the purchase price and development costs, whichever is less, up to a maximum of \$16,200.

(d) *Combination loans.* (1) The total principal obligation for a loan to purchase a new manufactured home and a lot on which to place the home shall not exceed the sum of the following itemized amounts, up to a maximum of \$64,800:

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of

wheels and axles (if not included in the freight charge);

(iv) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer;

(v) The appraised value of the developed manufactured home lot (as determined by a HUD-approved appraisal, including on-site water and utility connections, sanitary facilities, site improvements and landscaping) or the purchase price, whichever is less;

(vi) The actual dealer's cost of appurtenances to the home such as a permanent foundation, garage, carport or patio; and

(vii) Any applicable charges authorized at §201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home and lot shall not exceed the lesser of the following amounts, up to a maximum of \$64,800:

(i) 95 percent of the total appraised value of the home, the lot, and any appurtenances (as determined by a HUD-approved appraisal), plus 95 percent of any applicable charges authorized at §201.25(b); or

(ii) 95 percent of the purchase price of the home, the lot, and any appurtenances.

(3) The purchase price of a manufactured home and a lot financed with a combination loan shall include the retail cost to the borrower of all items set forth in the purchase contract or contracts, including any applicable charges authorized under §201.25(b).

(e) *Manufactured home loan limits in high-cost areas.* (1) The maximum loan amounts otherwise applicable under paragraphs (b), (c) and (d) of this section may be increased by an amount not to exceed 40 percent where the manufactured home and/or lot is purchased and located in Alaska, Guam or Hawaii.

(2) The maximum loan amounts otherwise applicable under paragraphs (c) and (d) of this section may be increased for any geographical area except Alaska, Guam or Hawaii to the extent deemed necessary by the Secretary; however, any increased loan amount may not exceed the lesser of (i) 185 percent of the dollar amounts specified in paragraphs (c) and (d) of this section;

or (ii) the dollar amounts specified in paragraphs (c) and (d) of this section, as increased by the same percentage by which 95 percent of the median 1-family house price in the area (as determined by the Secretary for purposes of § 203.18) exceeds \$67,500.

(f) *Loan refinancing.* (1) The total principal obligation of a loan made to refinance a borrower's existing insured property improvement loan shall not exceed the maximum loan amount permitted under this section for the particular type of loan, provided that any amount in excess of the cost to the borrower of prepaying the existing loan shall be made available only to finance additional property improvements meeting the requirements of this part.

(2) The total principal obligation of a loan made to refinance a borrower's existing insured manufactured home loan shall not exceed the lesser of the cost to the borrower of prepaying the existing loan or the maximum loan amount permitted under this section for the particular type of loan.

(3) The total principal obligation of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the cost to the borrower of prepaying the existing loan or the appraised value of the property (as determined by a HUD-approved appraisal), whichever is less, up to the maximum loan amount permitted under this section for the particular type of loan.

(4) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the total principal obligation of the combination loan shall be determined in accordance with paragraph (d)(1) or (d)(2) of this section.

(5) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the total principal obligation of the combination loan shall not exceed the lesser of the following amounts, up to a maximum of \$64,800:

(i) The cost to the borrower of prepaying any existing loan on the home, plus the purchase price of the lot; or

(ii) The appraised value of the home and lot (as determined by a HUD-approved appraisal).

(g) *Minimum loan amount.* A lender may not require, as a condition of providing a loan insured under this part, that the principal amount of the loan exceed a minimum amount established by the lender.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33406, Sept. 3, 1987; 53 FR 8880, Mar. 18, 1988; 54 FR 10537, Mar. 14, 1989; 54 FR 36264, Aug. 31, 1989; 56 FR 52429, Oct. 18, 1991; 57 FR 45246, Sept. 30, 1992; 58 FR 41001, July 30, 1993; 59 FR 9084, Feb. 25, 1994; 61 FR 19796, May 2, 1996; 62 FR 20082, Apr. 24, 1997]

§ 201.11 Loan maturities.

(a) *Property improvement loans.* The term of a property improvement loan shall be not less than six months and not more than 20 years and 32 days from the date of the loan, except that:

(1) The maximum term for a single family property improvement loan on a manufactured home that qualifies as real property shall not exceed 15 years and 32 days from the date of the loan;

(2) The maximum term for a manufactured home improvement loan shall not exceed 12 years and 32 days from the date of the loan; and

(3) The maximum term for an historic preservation loan shall not exceed 15 years and 32 days from the date of the loan.

(b) *Manufactured home loans.* The term of a manufactured home loan shall be not less than six months and not more than 20 years and 32 days from the date of the loan, except that:

(1) The maximum term for a manufactured home lot loan shall not exceed 15 years and 32 days from the date of the loan; and

(2) The maximum term for a multi-module manufactured home and lot in combination shall not exceed 25 years and 32 days from the date of the loan.

(c) *Loan refinancing.* A loan to be refinanced under this part may be refinanced for an extended period.

(1) The term of a loan to refinance a borrower's existing insured property improvement or manufactured home loan shall not exceed the maximum term permitted under paragraph (a) or (b) of this section for the particular type of loan. In addition, the total time

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period from the date of the original loan to the final maturity of the refinanced loan shall not exceed:

(i) In the case of a property improvement loan, the maximum term permitted under paragraph (a) of this section plus 9 years and 11 months; and

(ii) In the case of manufactured home loan, the maximum term permitted under paragraph (b) of this section plus 4 years and 11 months.

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(4) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33406, Sept. 3, 1987; 54 FR 10537, Mar. 14, 1989; 56 FR 52430, Oct. 18, 1991; 57 FR 45246, Sept. 30, 1992; 61 FR 19796, May 2, 1996]

§ 201.12 Requirements for the note.

The note shall bear the genuine signature of each borrower and of any co-maker or co-signer, be valid and enforceable against the borrower and any co-maker or co-signer, and be complete and regular on its face. The borrower and any co-maker or co-signer shall execute the note for the full amount of the loan obligation. Although the note may be executed by the borrower on an earlier date, the date of the loan shall be the date that the loan proceeds are disbursed by the lender. Such date shall be entered on the note when disbursement occurs. The note shall separately recite the principal amount and any interest at an agreed annual rate that comprises the borrower's payment obligation. The lender shall assure that the note and all other documents evi-

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dencing the loan transaction are in compliance with applicable Federal, State, and local laws. If the note is executed on behalf of a corporation, partnership, or trust by an authorized representative, it shall create a binding obligation on such entity.

[61 FR 19797, May 2, 1996]

§ 201.13 Interest and discount points.

The interest rate for any loan shall be negotiated and agreed to by the borrower and the lender, and such interest rate shall be fixed for the full term of the loan and recited in the note. Interest on the loan shall accrue from the date of the loan, and shall be calculated on a simple interest basis. The lender and the borrower may negotiate the amount of discount points, if any, to be paid by the borrower as part of the borrower's initial payment. The lender shall not require or allow any party other than the borrower to pay any discount points or other financing charges in connection with the loan transaction.

[61 FR 19797, May 2, 1996]

§ 201.14 Payments on the loan.

The note normally shall provide for equal installment payments due weekly, biweekly, semi-monthly or monthly. The note may provide for either or both of the first and final payments to vary in amount but not to exceed 1½ times the regular installment. Where the borrower has an irregular flow of income, the note may be payable at quarterly or semi-annual intervals corresponding with the borrower's flow of income. The first scheduled payment after the borrower's initial payment shall be due no later than two months from the date of the loan. Multiple payment schedules may not be used in connection with any loan.

§ 201.15 Late charges to borrowers.

(a) *Imposition of late charge.* The note may provide for imposition of a late charge unless precluded by State law. The late charge may be imposed only for installments of principal and interest which are in arrears for the greater of 15 calendar days or the number of days required by applicable State law before such a charge may be imposed.

Late charges must be billed to the borrower or reflected in the payment coupon, and evidence of any late charges that have been paid must be in the loan file if an insurance claim is made.

(b) *Amount of late charge.* The late charge shall not exceed the lesser of five percent of each installment of principal and interest, up to a maximum of \$10 per installment for any property improvement loan and \$15 per installment for any manufactured home loan, or the maximum amount permitted by applicable State law.

(c) *Method of payment.* Payment of any late charge cannot be deducted from the monthly payment for principal and interest, but must be an additional charge to the borrower.

(d) *Daily interest in lieu of late charges.* In lieu of late charges, the note may provide for interest to accrue on installments in arrears on a daily basis at the interest rate in the note.

[54 FR 36264, Aug. 31, 1989]

§ 201.16 Default provision.

The loan note shall contain a provision for acceleration of maturity, at the option of the holder, upon a default by the borrower.

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

[61 FR 19797, May 2, 1996]

§ 201.18 Modification agreement or repayment plan.

(a) *Modification agreement or repayment plan.* A written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used in lieu of refinancing of a delinquent or defaulted loan to reduce or increase the monthly payment, but not to increase the term or the interest rate, so as to assure that the delinquent or defaulted loan is brought current before or by the end of the loan term. A modification agreement may also be used in lieu of refi-

ancing in connection with a loan that is current to effect a reduction in the interest rate, and in the monthly payment, for the remainder of the loan term. When a modification agreement is used, no insurance reporting is required under § 201.30.

(b) *Repayment plan.* The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a repayment plan is used, no insurance reporting is required under § 201.30.

[52 FR 33406, Sept. 3, 1987, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.19 Refinanced and assumed loans.

(a) *Conditions on refinancing.* (1) An existing insured property improvement loan or manufactured home loan may be refinanced without an advance of funds only under the following conditions:

(i) A loan that is in default may not be refinanced for an amount greater than the original principal balance of the loan;

(ii) The refinancing of a loan for the original borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26;

(iii) If there are co-makers or co-signers on the original note, the lender shall require the same co-makers or co-signers on the refinanced note, unless the lender obtains the Secretary's approval to release a co-maker or co-signer from liability under the note in accordance with § 201.24(e); and

(iv) A loan that was assumed in accordance with paragraph (c) of this section may be refinanced, subject to all of the requirements of this part except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26, as long as the original borrower and any intervening assumptors were released from liability for repayment of the loan at the time the loan was assumed. A lender may not refinance a previously assumed loan under any other circumstances, unless the requirements of

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§ 201.22 are also met and the Secretary has approved a release of the original borrower and any intervening assumptors in accordance with § 201.24(e).

(2) An existing insured property improvement loan may be refinanced with an advance of funds for additional improvements only under the following conditions:

(i) The existing insured loan must not be in default; and

(ii) The refinancing shall be subject to all of the requirements of this part applicable to the particular type of loan and to the additional improvements being financed.

(3) An existing uninsured manufactured home loan may be refinanced only for the original borrower and only under the following conditions:

(i) The existing uninsured loan must not be in default;

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all the requirements of this part applicable to the particular type of loan except §§ 201.23 and 201.26(b)(4);

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part; and

(iv) Refinancing of an existing uninsured manufactured home purchase loan in connection with the purchase of a manufactured home lot shall be subject to all of the requirements of this part except § 201.26(b)(4).

(b) *Note and security requirements for refinanced loans.* (1) Refinancing of a loan requires the execution of a new note and cancellation of the old note.

(2) Refinancing of a loan that was secured when originated, regardless of the principal balance of the note at the time of refinancing, is required to be secured.

(3) Refinancing of a loan that was not secured when originated is not required to be secured if no additional funds are advanced.

(4) When a refinanced loan is secured, the lender shall obtain and record a new security instrument in accordance with § 201.24 and shall release the original lien, unless State law permits a re-

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newal and extension of the original lien.

(5) Copies of all documents pertaining to the original loan must be retained in the loan file for the refinanced loan.

(c) *Assumed loans.* (1) At the option of the lender, an existing insured property improvement loan or manufactured home loan may be assumed, subject to the following conditions:

(i) A determination by the lender that the assumptor is eligible under § 201.20(a) or 201.21(a) and meets the requirements of § 201.22; and

(ii) The execution of an assumption agreement that is satisfactory to the lender and is signed by the assumptor and the original borrower or previous assumptor at the time of assumption.

(2) The lender shall not permit an assumption under any circumstances other than those contained in this section, and shall include appropriate provisions in any note or security agreement to enforce this requirement.

(3) Prior to the execution of the assumption agreement, the lender shall provide the assumptor with a written notice, to be signed by the assumptor and retained in the loan file, that:

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

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

(4) If the other requirements of paragraph (c) of this section are met, the lender at its option may release the original borrower and any intervening assumptors from liability for the repayment of a loan obligation insured under this part. The prior approval of the Secretary under § 201.24(e) is not required. The lender shall retain documentation of the release in the loan file.

[52 FR 33406, Sept. 3, 1987, as amended at 56 FR 52430, Oct. 18, 1991]

Subpart C—Eligibility and Disbursement Requirements

§ 201.20 Property improvement loan eligibility.

(a) *Borrower eligibility.* (1) To be eligible for a property improvement loan (other than a manufactured home improvement loan), the borrower shall have at least a one-half interest in one of the following:

- (i) Fee simple title to the real property;
- (ii) Lease of the real property for a fixed term which expires not less than six calendar months after the final maturity of the loan; or
- (iii) A properly recorded land installment contract for the purchase of the real property.

(2) To be eligible for a manufactured home improvement loan, the borrower shall have at least a one-half interest in the manufactured home, and the home must be the principal residence of the borrower.

(b) *Eligible use of the loan proceeds.* (1) The loan proceeds shall be used only for the purposes disclosed in the loan application. If the borrower plans to use a dealer or contractor to carry out the improvement work, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

(2) The loan proceeds shall be used only to finance property improvements that substantially protect or improve the basic livability or utility of the property. The Secretary will establish a list of items and activities that may not be financed with the proceeds of any property improvement loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(3) The loan proceeds shall only be used to finance property improvements that are started after loan approval, unless:

(i) The prior approval of the Secretary is obtained for an exception to this requirement; or

(ii) The property is located in a major disaster area declared by the President, and the lender determines that emergency action is needed to repair damage resulting from the disaster.

(c) *Special pre-application requirements.* (1) Where the proceeds are to be used for an historic preservation loan, the proposed improvements shall be reviewed and approved by the State Historic Preservation Officer (or other person authorized by the Secretary of the Interior to make such reviews) prior to making application for a loan. The purpose of the review is to determine that (i) the structure is an historic residential structure listed on the National Register of Historic Places or certified by the Secretary of the Interior as conforming with National Register criteria, and (ii) the proposed improvements comply with criteria set by the Secretary of the Interior for the preservation of historic structures.

(2) Where the proceeds are to be used for a fire safety equipment loan, the proposed improvements shall be reviewed and approved by the State or local agency having primary jurisdiction over the fire safety requirements of health care facilities prior to making application for a loan.

[50 FR 43523, Oct. 25, 1985, as amended at 56 FR 52430, Oct. 18, 1991; 61 FR 19797, May 2, 1996; 62 FR 65181, Dec. 10, 1997]

§ 201.21 Manufactured home loan eligibility.

(a) *Borrower eligibility.* To be eligible for a manufactured home loan (whether a manufactured home purchase loan, a manufactured home lot loan, or a combination loan), the borrower must become the owner of the particular property which is to be financed with such a loan. Where the loan involves a manufactured home which is classified as realty, ownership of the home must be in fee simple. Where the loan involves a manufactured home lot, ownership of the lot must be in fee simple, except where the lot consists of a share in a cooperative association which owns and operates a manufactured home park.

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(b) *Eligible use of loan proceeds.* (1) The loan proceeds may be used for the purchase or refinancing of a manufactured home, a suitably developed lot on which to place a manufactured home already owned by the borrower, or a manufactured home and a suitably developed lot for the home in combination. The loan proceeds may also be used to refinance an existing manufactured home already owned by the borrower in connection with the purchase of a manufactured home lot, or to refinance a lot already owned by the borrower in connection with the purchase of a manufactured home. Where the proceeds are for a manufactured home purchase loan or combination loan, the home must be the borrower's principal residence. Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home must be placed on the lot and occupied as the borrower's principal residence within six months after the date of the loan.

(2) A manufactured home financed with an insured loan under this part may be either:

(i) A new home, which is one that is purchased by the borrower within 18 months after the date of manufacture and has not been previously occupied; or

(ii) An existing home, which is one that does not meet the criteria for a new home. In order to be eligible for financing with an insured loan under this part, the manufactured home, its warranty and the site on which the home is placed must meet the requirements of paragraphs (c) through (e) of this section.

(3) The proceeds of a loan to purchase a new manufactured home or a new manufactured home and lot shall not be used to purchase furniture or wheels and axles, and the cost of these items shall not be included in the total principal obligation calculated under §201.10 (b)(1) or (d)(1).

(4) The proceeds of a manufactured home purchase loan may be used for the purchase, construction or installation of a garage, carport, patio or other comparable appurtenance to the manufactured home, as stated in the retail purchase contract and as approved by the Secretary. The proceeds of a combination loan may be used for the pur-

chase, construction or installation of a permanent foundation, garage, carport, patio or other comparable appurtenance to the manufactured home.

(5) The Secretary will establish a list of items and activities that may not be financed with the proceeds of any manufactured home loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(c) *Construction, transportation and installation requirements.* (1) The manufactured home shall be certified by the manufacturer under applicable criminal and civil penalties for fraud and misrepresentation to have been constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5426, so as to conform to all applicable Federal construction and safety standards, as evidenced by a label or tag affixed to the manufactured home in accordance with 24 CFR 3280.8.

(2) During any period of transportation from the factory to the borrower's homesite, the structural integrity of the manufactured home shall be maintained so that it will be livable and durable.

(3) The installation or erection of the manufactured home on the homesite shall comply with the manufacturer's requirements for anchoring, support, stability and maintenance. Any permanent foundation shall be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3).

(4) For any manufactured home purchase loan or combination loan involving a sale of the manufactured home by a dealer, the dealer shall inspect the manufactured home, as installed or erected on the homesite, for structural damage or other defects resulting from the transportation and installation of the home. The dealer shall also test the performance of the home's plumbing, mechanical and electrical systems to assure that they are fully operational.

(d) *Manufacturer's warranty requirements.* (1) To induce the Secretary to insure a title I loan under this part for the purchase of a new manufactured

home and to induce a borrower to purchase such a home, the home manufacturer shall furnish the borrower with a written warranty, duly executed by an authorized representative of the manufacturer on a HUD-approved form. The warranty shall be provided without cost to the borrower. The effective date of the warranty shall be the date of delivery of the manufactured home to the borrower, regardless of when the warranty was executed by the manufacturer or was delivered to the borrower.

(2) The warranty shall obligate the home manufacturer to take appropriate action to correct any nonconformity with the standards prescribed in paragraph (c)(1) of this section or any defects in materials or workmanship which become evident within one year after the date of delivery. This warranty shall be in addition to, and not in derogation of, all other rights and privileges which the borrower may have under any other law or instrument during such period or thereafter. A copy of the warranty shall be retained in the lender's loan file.

(3) Prior to making a loan involving a new manufactured home, the lender shall investigate whether the home manufacturer is substantially complying with its warranty obligations on other homes financed by the lender under any program. If the lender knows, because of consumer complaints, dealer comments or other information concerning the manufacturer received in the course of business, that consumers have complained about warranty performance, the lender shall ascertain whether such complaints have been resolved. The lender's findings shall be documented in the loan file. Such documentation may reference information or materials contained in other files of the lender, provided that the file contains a written certification signed by a responsible loan officer under applicable criminal and civil penalties for fraud and misrepresentation that the lender's findings are supported by such other information or materials.

(4) If the lender concludes under paragraph (d)(3) of this section that a manufacturer may not be honoring its warranties, the lender shall immediately notify the Secretary in writing,

with documentation of the facts and circumstances.

(e) *Manufactured homesite standards.*

(1) To assure the suitability of the homesite, the manufactured home shall be placed on a leased site in a manufactured home park or on an individual manufactured home lot or other site owned or leased by the borrower that meets the following standards. A manufactured home may be placed on a site within Indian trust or otherwise restricted lands if the borrower owns or leases the site, or if the borrower obtains written permission acceptable to the Secretary from the trustee or the tribal authority who controls the use of the site.

(2) The manufactured homesite shall be served by adequate public or community water and sewerage systems, unless appropriate local officials certify that either or both such systems are unavailable to provide an adequate level of service to the manufactured homesite. If either or both such systems are not available, the manufactured homesite shall comply with local or State minimum lot area requirements for the provision of onsite water supply and/or sewage disposal.

(3) When the manufactured home is to be placed on a leased site in a manufactured home park, the lender shall obtain certifications from the appropriate State or local government officials that the park complies with minimum standards relating to vehicular access, water supply, sewage disposal, utility connections, and other aspects of park development. Where minimum State and local standards for park development are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the park meets minimum standards for park development prescribed by the Secretary.

(4) When the manufactured home is to be placed on an individual manufactured home lot or other site owned or leased by the borrower (or on an Indian land site under paragraph (e)(1) of this section), the lender shall obtain certifications from the appropriate local government officials that:

(i) The site complies with local zoning ordinances and regulations, if any;

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(ii) Adequate vehicular access from a public right-of-way is available to the site;

(iii) Adequate water supply and sewage disposal facilities are available to or on the site; and

(iv) Any other minimum local standards and requirements for site suitability are met. Where minimum local standards for water supply and sewage disposal are not established or enforced, the lender shall obtain a certification from a registered civil engineer that the site meets minimum standards for water supply and sewage disposal prescribed by the Secretary.

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

[50 FR 43523, Oct. 25, 1985; 51 FR 1496, Jan. 14, 1986, as amended at 54 FR 36264, Aug. 31, 1989; 56 FR 52431, Oct. 18, 1991; 61 FR 19797, May 2, 1996]

§ 201.22 Credit requirements for borrowers.

(a) *Credit application and review.* (1) Before making a loan insured under this part, the lender shall exercise prudence and diligence to determine whether the borrower and any co-maker or co-signer is solvent and an acceptable credit risk, with a reasonable ability to make payments on the loan obligation. All documentation supporting this determination and relating to the lender's review of the credit of the borrower and of any co-maker or co-signer shall be retained in the loan file.

(2) The lender shall obtain a separate dated credit application on a HUD-approved form, executed by the borrower and any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation, for each loan made. The lender shall verify that the borrower's Social Security Number is valid, through such documentation as may be prescribed by the Secretary.

(3) The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years,

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the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

(4) The lender shall also determine the total amount of the borrower's existing and proposed title I loans to ensure that the loan amounts in § 201.10 are not exceeded.

(5) As part of its credit investigation, the lender shall obtain a consumer credit report stating the credit accounts and payment history of the borrower and of any co-maker or co-signer. Subject to state or local law, the lender shall check with the inquirers concerning all credit inquiries reported within the previous 90 days to determine whether the borrower or the co-maker or co-signer has incurred debts not listed on the credit application. If a consumer credit report is not available or is incomplete, the loan file shall contain other documentation of the lender's diligent investigation of the credit of the borrower or of the co-maker or co-signer.

(6) If the consumer credit report does not contain the necessary information, the lender shall obtain written verification that the borrower is not over 30 days delinquent on any senior mortgages or deeds of trust on the property being improved with a property improvement loan.

(7) The lender shall verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal Government.

(8) For any loan with a total principal balance in excess of \$5,000, the lender shall obtain written verification of the source of all funds of the borrower required for the borrower's initial payment, if such payment will be in excess of five percent of the loan.

(9) Before making a final determination on the creditworthiness of the borrower, the lender shall conduct a face-to-face or telephone interview with the

borrower and any co-maker or co-signer to resolve any discrepancies in the information on the credit application and to assure that the information is accurate and complete.

(10) After a thorough credit investigation and in the absence of information to the contrary, the lender may rely upon all statements of fact made by the borrower or any co-maker or co-signer in a credit application.

(b) *Income requirements.* (1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. If these expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's creditworthiness that support approval of the loan.

(2) In determining whether the borrower's income is adequate, the following definitions are applicable:

(i) *Effective gross income* is defined as continuing income from all sources that is reasonably expected to be available during the first two years of the loan obligation, without any deduction for income taxes or other items.

(ii) *Total fixed expenses* is the sum of the borrower's housing expenses and other recurring charges.

(iii) *Housing expenses* includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

(iv) *Other recurring charges* include all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, and any other debt for which the obligation is expected to continue for six months or more.

(c) *Evidence of delinquency, default or misrepresentation.* Except with the prior approval of the Secretary the lender shall not approve a loan if the lender has knowledge of any of the following circumstances:

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of a loan obligation owed to or insured or guaranteed by the Federal Government, unless the debt has since been discharged or satisfied; or

(2) The borrower has previously made material misstatements of fact on applications for loans or other assistance.

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

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 10537, Mar. 14, 1989; 56 FR 52431, Oct. 18, 1991; 57 FR 6480, Feb. 25, 1992; 61 FR 19797, May 2, 1996]

§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for the payment in cash of any costs that will not be paid, or are not eligible to be paid, from the proceeds of the loan. Such costs payable by the borrower may include any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges that may not be financed, and any other costs in excess of the loan amount. No part of such costs payable by the borrower may be loaned, advanced, or paid to or for the benefit of the borrower by the dealer, the manufacturer, or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application. Any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan, unless the prior approval of the Secretary is obtained for an exception to this requirement. The lender shall consider any such loan obligation in performing the credit investigation. Documentation of any initial payment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* In the case of a manufactured home

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purchase loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the home. The borrower's equity in an existing manufactured home and any movable appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least five percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the manufactured home and lot. If the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan, but without any cash payment to the borrower.

[61 FR 19798, May 2, 1996]

§ 201.24 Security requirements.

(a) *Property improvement loans—(1) Property improvement loans in excess of \$7,500.* (i) Any property improvement loan in excess of \$7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple.

(ii) If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust.

(iii) The lien need not be a first lien on the property; however, the lien securing the Title I loan must hold no less than the second lien position. This requirement shall not apply where the first and second mortgages were made at the same time or the second mortgage was provided by a state or local government agency in conjunction with a downpayment assistance program.

(2) *Property improvement loans of \$7,500 or less.* Any property improvement loan for \$7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including any such additional loans, the total amount of all Title I loans on the improved property is more than \$7,500.

(3) *Manufactured home improvement loans.* Manufactured home improvement loans need not be secured.

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the home (or lot or home and lot, as appropriate), its furnishings, equipment, accessories, and appurtenances. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement, a properly recorded security instrument executed by the borrower and any other owner of the property, or another acceptable instrument, such as a certificate of title issued by the State and containing a recitation of the lender's lien interest in the manufactured home.

(c) *Recording and perfection of security.* The lender shall assure that the legal description of the property as recited in the security instrument is accurate, and that the security instrument creates a valid and enforceable lien on the property in the jurisdiction in which the property is located. The security instrument shall be recorded and perfected in the manner specified by applicable State law in the State where the property is located.

(d) *Substitution or subordination of security.* The Secretary may approve substitution or subordination of security where the security value will not be impaired or reduced.

(e) *Release of liability or lien.* The lender shall not release the borrower or any

co-maker or co-signer from any liability under a note or from any lien securing a loan insured under this part without the prior approval of the Secretary.

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 36265, Aug. 31, 1989; 61 FR 19798, May 2, 1996; 66 FR 56419, Nov. 7, 2001]

§ 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 dis-

bursing 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.

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(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 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 purchase 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.

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

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 54 FR 36265, Aug. 31, 1989; 56 FR 52432, Oct. 18, 1991, 57 FR 6480, Feb. 25, 1992; 61 FR 19798, May 2, 1996; 62 FR 65181, Dec. 10, 1997; 66 FR 56420, Nov. 7, 2001]

§ 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 not less than \$32,000 and \$63,000, respectively. The required net worth must be maintained in assets acceptable to the Secretary.

(ii) *Business experience.* All property improvement loan and manufactured home dealers must have demonstrated business experience as a property improvement contractor or supplier, or in manufactured home retail sales, as applicable.

(2) The lender's approval of a dealer shall be documented on a HUD-approved form, signed and dated by the dealer and the lender under applicable criminal and civil penalties for fraud and misrepresentation, and containing information supplied by the dealer on its trade name, places of business, type of ownership, type of business, and names and employment history of the owners, principals, officers, and salespersons. The dealer shall furnish a current financial statement prepared by someone who is independent of the dealer and is qualified by education and experience to prepare such statements, together with such other documentation as the lender deems necessary to support its approval of the dealer. The lender shall obtain a commercial credit report on the dealer and consumer credit reports on the owners, principals, and officers of the dealership.

(3) The lender shall require each dealer to apply annually for reapproval. The dealer shall furnish the same documentation as is required under paragraph (a)(2) of this section to support its application for reapproval. In no case shall the lender reapprove a dealer that is unable to meet the minimum net worth requirements in paragraph (a)(1) of this section.

(4) The lender shall supervise and monitor each approved dealer's activities with respect to loans insured under this part. The lender shall visit each approved dealer's places of business at least once in every six months to review its Title I performance and compliance. The lender shall maintain a file on each approved dealer which contains the executed dealer approval form and supporting documentation required under paragraph (a)(2) of this section, together with information on the lender's experience with Title I loans involving the dealer. Each dealer file shall contain information about borrower defaults on Title I loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrower complaints and their resolution, and records of the lender's periodic review visits to the dealer's premises. The lender may also require that the dealer furnish records on individual loan transactions, if needed to enable the lender to review the dealer's Title I performance and compliance.

(5) If a dealer does not satisfactorily perform its contractual obligations to borrowers, does not comply with Title I program requirements, or is unresponsive to the lender's supervision and monitoring requirements, the lender shall terminate the dealer's approval and immediately notify the Secretary with written documentation of the facts. A dealer whose approval is terminated under these circumstances shall not be reapproved without prior written approval from the Secretary. The lender may in its discretion terminate the approval of a dealer for other reasons at any time.

(6) The lender shall require each approved (or reapproved) dealer to provide written notification of any material change in its trade name(s), place(s) of business, type of ownership, type of business, or principal individuals who control or manage the business. The dealer shall furnish such notification to the lender within 30 days after the date of any material change.

(7) As a condition of manufactured home dealer approval (or reapproval), the lender may require a manufactured home dealer to execute a written

agreement that, if requested by the lender, the dealer will resell any manufactured home repossessed by the lender under a title I insured manufactured home purchase loan approved by the lender as a dealer loan involving that dealer.

(b) *Provision for full or partial recourse.* In the case of a dealer-originated manufactured home purchase loan or combination loan, the lender and the dealer may agree to a provision in the loan documents for partial or full recourse against the dealer, to reduce or eliminate the lender's loss in the event of foreclosure or repossession. Such recourse provision shall specify that, for a default occurring within a period of not more than three years from the date of the loan, the dealer shall reimburse the lender for a fixed percentage of the unpaid amount of the loan obligation, after deducting the proceeds from the sale of the property and any amounts received or retained by the lender after the date of default. However, the extent of the dealer's liability may not exceed 100 percent of the unpaid amount of the loan obligation prior to such deductions. When a claim is filed, the lender shall notify the Secretary if the loan was subject to a recourse agreement and whether the recourse agreement has been honored. If without the lender's approval a dealer has failed to honor its recourse obligation, the lender shall notify the Secretary and shall assign the recourse obligation to the Secretary in filing an insurance claim.

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

[50 FR 43523, Oct. 25, 1985, as amended at 56 FR 52433, Oct. 18, 1991; 61 FR 19799, May 2, 1996; 66 FR 56420, Nov. 7, 2001]

§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) *Flood insurance.* No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA), unless flood insurance on the property is obtained by the borrower in compliance with section 102 of the Flood Disaster Protection Act of

1973 (42 U.S.C. 4012a). Such insurance shall be obtained at any time during the term of the loan that the lender determines that the secured property is located in a special flood hazard area identified by FEMA, and shall be maintained by the borrower for the remaining term of the loan, or until the lender determines that the property is no longer in a special flood hazard area, or until the property is repossessed or foreclosed upon by the lender. The amount of such insurance shall be at least equal to the unpaid balance of the Title I loan, and the lender shall be named as the loss payee for flood insurance benefits.

(b) *Hazard insurance.* No manufactured home purchase loan or combination loan shall be eligible for insurance under this part unless hazard insurance on the manufactured home is obtained by the borrower and the lender is named as a loss payee of insurance benefits. Such insurance shall be maintained by the borrower for the full term of the loan or until the property is repossessed or foreclosed by the lender, and in an amount at least equal to the unpaid balance of the loan, except that the amount of insurance coverage shall be not less than the actual cash value of the home where State law precludes a higher amount. If the borrower fails to maintain such insurance, the lender shall obtain it at the borrower's expense. If the home is not insured against hazards and sustains damage which would normally be covered by such insurance during the borrower's ownership, the appraised value of the home for claim purposes will be adjusted in accordance with § 201.51(b)(3). Upon acquiring title to the property through repossession or foreclosure, the lender shall maintain hazard insurance upon the property in the amount prescribed above until its disposition and sale.

(c) *Coastal barriers properties.* No title I insurance shall be made available under this part for any property improvement loan or manufactured home loan except pursuant to a loan application approved before October 18, 1982, with respect to any property within the Coastal Barriers Resources System

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established by the Coastal Barriers Resources Act (16 U.S.C. 3501).

[50 FR 43523, Oct. 25, 1985, as amended at 51 FR 32060, Sept. 9, 1986; 53 FR 10537, Mar. 14, 1989; 54 FR 36265, Aug. 31, 1989; 61 FR 19799, May 2, 1996]

§ 201.29 Ineligible participants.

No loan may be insured under this part where the lender has been advised in writing by HUD or otherwise knows that any participant in the transaction as a dealer, home manufacturer, contractor, supplier, or broker, or as its agent or representative, has been suspended or debarred, or has otherwise been determined by HUD to be ineligible to participate in the title I program.

Subpart D—Insurance of Loans

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on each loan reported for insurance within 31 days from the date of the loan's origination or purchase from a dealer or another lender. The loan report must be submitted on the form prescribed by the Secretary, and must contain the data prescribed by HUD. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No transfer of loan report is required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement.

(b) *Late reports.* The Secretary may accept a late report on a loan where the lender certifies that the obligation is not in default.

(c) *Electronic loan reporting.* With the prior approval of the Secretary, the lender may use electronic transmission

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to report loans for insurance in accordance with paragraph (a) of this section.

(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; 66 FR 56420, Nov. 7, 2001]

§ 201.31 Insurance charge.

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to 1.00 percent of the loan amount, multiplied by the number of years of the loan term. The insurance charge shall be paid in the manner prescribed in paragraph (b) of this section; however, no charge shall be made for a period of 14 days or less, and a charge for a full month shall be made for a period of more than 14 days. There shall be no abatement or refund of an insurance charge except as provided in paragraph (e) of this section.

(b) *Payment of insurance charge.* (1) For any loan having a maturity of 25 months or less, payment of the entire insurance charge prescribed in paragraph (a) of this section is due on the 25th calendar day after the date the Secretary acknowledges the loan report.

(2)(i) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and successive installments due on the 25th calendar day after the date of billing by the Secretary.

(ii) For any loan having a maturity in excess of 25 months, payment shall be made in annual installments of 1.00 percent of the loan amount until the insurance charge is paid.

(3) All insurance charges are considered earned when paid.

(4) The Secretary may require that loan insurance charges be remitted electronically. Instructions implementing this requirement shall be communicated to all affected lenders.

(c) *Penalty charge and interest.* Insurance charges not received from the lender by the due date specified in

paragraph (b) of this section shall be assessed a penalty charge of four percent of the amount of the payment. Insurance charges received from the lender more than 30 days after the due date specified in paragraph (b) of this section shall also be assessed daily interest at the current United States Treasury value of funds rate, as published periodically in the FEDERAL REGISTER. However, no penalty charge or daily interest shall be assessed if the Secretary fails to acknowledge receipt of the loan report or fails to issue a proper billing to the lender for the insurance charges.

(d) *Adjustment on notes transferred.* Where there is a transfer of loan obligations between lenders and the insurance charges on such obligations have already been paid, any adjustment of such charges shall be made by the lenders involved. Any unpaid installments of the insurance charge shall be paid by the purchasing lender.

(e) *Refund or abatement of insurance charges.* A lender shall be entitled to a refund or abatement of insurance charges only in the following instances:

(1) Where the loan obligation has been refinanced, the unearned portion of the charge on the original obligation shall be credited to the charge on the refinanced loan.

(2) Where the loan obligation is prepaid in full or an insurance claim is filed, charges falling due after such prepayment or claim shall be abated.

(3) When a loan (or portion thereof) is found to be ineligible for insurance, charges paid on the ineligible portion shall be refunded, except where the Secretary determines that there was fraud or misrepresentation by the lender in the loan transaction. Such refund shall be made only if a claim is denied by the Secretary or the ineligibility is reported by the lender promptly upon discovery and confirmed by the Secretary. In no event shall a charge be refunded on the basis of loan ineligibility where the application for refund is made after the loan is paid in full. If a loan or claim has been denied and is subsequently resubmitted, the refunded amount of the insurance charge plus any accrued insurance charge shall be repaid.

(f) *Lender passing insurance charge on to borrower.* The insurance charge may be passed on to the borrower, provided that such charge is fully disclosed to the borrower.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 36265, Aug. 31, 1989; 60 FR 13855, Mar. 14, 1995; 66 FR 56420, Nov. 7, 2001]

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* The Secretary shall establish an insurance coverage reserve account for each lender. The amount of insurance coverage in each reserve account shall equal 10 percent of the amount disbursed, advanced, or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans.

(b) *Transfer of insured loans.* The lender shall not sell, assign or otherwise transfer any insured loan or loan reported for insurance to a transferee lender not approved to originate and purchase title I loans under a valid title I contract of insurance. Nothing contained herein shall be construed to prevent the pledging of such a loan as collateral security under a trust agreement, or otherwise, in connection with a bona fide loan transaction.

(c) *Transfer of insurance coverage.* Not more than \$5,000 in insurance coverage shall be transferred to or from a lender's reserve account during any fiscal year (October 1 through September 30) without the prior approval of the Secretary. Except in cases involving the sale, assignment or transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, the Secretary shall transfer insurance coverage to or from a lender's reserve account to accompany the loan transfers reported by lenders under § 201.30.

(1) In all cases involving the sale, assignment or transfer of loans sold without recourse, guaranty, guarantee, or repurchase agreement, the Secretary shall transfer insurance coverage to the reserve account established for the transferee lender in an amount equal to 10 percent of the actual purchase

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price or the net unpaid principal balance, whichever is lesser, but not to exceed the amount of insurance coverage in the transferor lender's reserve account prior to the transfer. Insurance coverage shall be added to the existing amount of insurance coverage in the transferee lender's reserve account. The Secretary may transfer insurance coverage with earmarking when a determination is made that it is in the Secretary's interest to do so.

(2) In cases involving the transfer of loans sold with recourse or under a guaranty, guarantee or repurchase agreement, no insurance coverage will be transferred and no reports will be required.

(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

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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

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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.

Subpart F—Default Under the Loan Obligation

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has serviced the loan in a timely manner and with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan, the lender or its agent shall contact the borrower and any co-maker or co-signer, either in a face-to-face meeting or by telephone, to discuss the reasons for the default and to seek its cure. If the borrower and the co-makers or co-signers cannot be located, will not discuss the default, or will not agree to its cure, the lender may proceed to take action under paragraph (b) of this section. The lender shall document the results of its efforts to contact the borrower and any co-maker or co-signer, and shall place in the loan file a copy of any modification agreement or repayment plan that has been offered.

(b) *Notice of default and acceleration.* Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall

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provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable State or local notice requirements, the notice shall be sent by certified mail and shall contain:

(1) A description of the obligation or security interest held by the lender;

(2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;

(3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;

(4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is accelerated and full payment of all amounts due under the loan is required;

(5) A statement that if the default persists the lender will report the default to an appropriate credit reporting agency; and

(6) Any other requirements prescribed by the Secretary.

(c) *Reinstatement of the loan.* The lender may rescind the acceleration of maturity after full payment is due and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan.

(d) *Notice to credit reporting agency.* If the loan maturity is accelerated and the loan is not reinstated, the lender shall report the default to an appropriate credit reporting agency.

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

[50 FR 43523, Oct. 25, 1985, as amended at 52 FR 33407, Sept. 3, 1987; 56 FR 52434, Oct. 18, 1991; 57 FR 6480, Feb. 25, 1992]

§ 201.51 Proceeding against the loan security.

(a) *Property improvement loans.* (1) After acceleration of maturity on a secured property improvement loan, the lender may either proceed against the loan security under its title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, it may submit an insurance claim only if it complies with the requirements of paragraph (a)(2) of this section.

(2) The lender may proceed against the secured property under its Title I security instrument and later submit a claim under its contract of insurance only with the prior approval of the Secretary. The Secretary's decision will be based upon all relevant factors, including but not limited to the appraised value and the amount of all outstanding loan obligations on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. In proceeding against the secured property, the lender shall comply with all applicable State and local laws, and shall take all actions necessary to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

(3) After acceleration of maturity on a defaulted unsecured property improvement loan, the lender may submit a claim under its contract of insurance.

(b) *Manufactured home loans.* (1) After acceleration of maturity on a defaulted manufactured home loan, the lender shall proceed against the loan security by foreclosure or repossession, as appropriate, in compliance with all applicable State and local laws, and shall acquire good, marketable title to the property securing the loan. The lender shall also take all actions necessary under State and local law to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

(2) Prior to foreclosure or repossession, the lender or its agent shall make a visual inspection of the property and prepare a report on its condition for placement in the loan file. If the lender determines that the property has been abandoned, the lender shall take such steps as are permitted under State or

local law to repossess or foreclose upon the property, without waiting for the notice period under § 201.50(b) to run.

(3) The lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower. This appraisal shall be performed on the homesite, unless the site owner requires that the home be removed before the appraisal can be performed, and it should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred. When the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and the appraised value shall be based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

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

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989; 54 FR 36266, Aug. 31, 1989; 56 FR 52435, Oct. 18, 1991]

§ 201.52 Acquisition by voluntary conveyance or surrender.

The lender may accept a voluntary conveyance of title to or ownership of the property securing a manufactured home loan which is in default, provided that (a) the lender accepts the conveyance in full satisfaction of the borrower's obligation, and (b) no claim is submitted under its contract of insurance. The lender may accept voluntary surrender of the property without satisfaction of the borrower's obligation, provided that if the lender intends thereafter to submit a claim under its contract of insurance, the lender shall acquire title to or ownership of the property and then dispose of and sell the property in compliance with State and local law, so as to assure that it can assign a valid and enforceable obligation, including any deficiency against the borrower, to the Secretary when submitting its claim. If the lender accepts a voluntary conveyance of

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title or a voluntary surrender of the property, the notice of default and acceleration under § 201.50(b) shall not be required.

[50 FR 43523, Oct. 25, 1985, as amended at 61 FR 19799, May 2, 1996]

§ 201.53 Disposition of manufactured home loan property.

Where the lender obtains title to property securing a manufactured home loan by repossession or foreclosure, the property shall be sold for the best price obtainable before making an insurance claim. In the case of a combination loan, the manufactured home and lot shall be sold in a single transaction and the manufactured home may not be removed from the lot, unless the prior approval of the Secretary is obtained for a different procedure. The best price obtainable shall be the greater of:

(a) The actual sales price of the property, after deducting the cost of repairs, furnishings, and equipment needed to make the property marketable, and after deducting the cost of transportation, set-up, and anchoring if the manufactured home is moved to a new homesite; or

(b) The appraised value of the property before repairs (as determined by a HUD-approved appraisal obtained in accordance with § 201.51(b)(3)).

[50 FR 43523, Oct. 25, 1985, as amended at 61 FR 19799, May 2, 1996]

§ 201.54 Insurance claim procedure.

(a) *Claim application.* A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form, executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by all documents and materials required by the Secretary for claim review. The claim submission shall contain original copies of all notes, security instruments, assumption agreements, releases of liability for repayment of the loan, judgments obtained by the lender against the borrower, and any related documents and forms, except where State or local law requires their reten-

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tion by the lender or a governmental body such as a court. As appropriate, the claim application shall be supported by the following:

(1) Documentation of the lender's efforts to effect recourse against any dealer in accordance with any recourse agreement under § 201.27(b) between the lender and the dealer and contained in the loan documents;

(2) Certification under applicable criminal and civil penalties for fraud and misrepresentation that the lender has complied with all applicable State and local laws in carrying out any foreclosure or repossession, including copies of all notices served upon the borrower or published in connection with such foreclosure or repossession; and

(3) Where a borrower has declared bankruptcy or insolvency or is deceased, copies of the documentation required to be retained in the loan file under § 201.42.

(b) *Maximum claim period.* (1) An insurance claim shall be filed not later than the following dates:

(i) For property improvement loans—nine months after the date of default.

(ii) For manufactured home loans—three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default.

(2) The Secretary may extend the claim filing period in a particular case, but only if the lender shows clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by one of the following:

(i) Litigation related to the loan;

(ii) Management control of the lender or the Title I loan portfolio was assumed by a Federal or State agency; or

(iii) The borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance on a property improvement loan.

(3) If a borrower is a "person in military service" as that term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and is in default on a loan insured under this part, any period of military service after the date of default shall be excluded in computing

the maximum time period for filing an insurance claim.

(c) *Resubmitted and supplemental claims.* (1) Any insurance claim which is resubmitted with an appeal of a claim denial or a request for a waiver of the regulations in accordance with §201.5(b) shall be filed within six months after the date of the claim denial.

(2) Any supplemental insurance claim shall be filed within six months after the date of payment on the initial claim. A reprocessing fee, in an amount prescribed by the Secretary, will be charged for any supplemental claim.

(d) *Assignment of lender's rights to the United States.* Upon the filing of the insurance claim, the lender shall assign its entire interest in the loan note (or in a judgment in lieu of the note), in any security held, and in any claim filed in probate, bankruptcy or insolvency proceedings, to the United States of America. The assignment shall be made in the form provided in paragraph (f) of this section, provided that if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable in the jurisdiction where the judgment or security was taken shall be used. If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim, unless the Secretary determines that recordation by the lender in that jurisdiction is impractical.

(e) *Valid and enforceable obligation when assigned.* The loan obligation evidenced by the note must be both valid and enforceable against the debtor at the time the note is assigned to the United States of America. If the Secretary has reason to believe that the obligation may not be either valid or enforceable against the borrower, the Secretary may either deny the claim and reassign the loan note to the lender, or require the lender to repurchase the paid claim and accept reassignment of the note. The lender will be notified of the reasons for the claim denial or repurchase. If the lender subsequently obtains a valid and enforceable judgment against the borrower for the unpaid balance of the loan, the lender

may resubmit the claim with an assignment of the judgment.

(f) *Form of assignment.* A lender shall use the following form of assignment, or one generally acceptable in the jurisdiction involved, properly dated, to assign the lender's entire interest in a loan note, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any security, in making an insurance claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the loan qualifies for insurance) to the United States of America (HUD).

(Financial Institution) _____

By: _____

Title: _____

Date: _____

If the assignment does not appear on the note or other instrument that is assigned, it shall be duly executed on an allonge which is attached to such note or other instrument.

(g) *Denial of insurance claim.* The Secretary may deny a claim for insurance in whole or in part based upon a violation of these regulations, unless a waiver of compliance with the regulations is granted under §201.5.

(h) *Incontestability of insurance claim payment.* Any insurance claim payment on a title I loan shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of the lender, unless a demand for repurchase of the loan obligation is made on behalf of the United States prior to the expiration of the two-year period.

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

[50 FR 43523, Oct. 25, 1985; 51 FR 5068, Feb. 11, 1986, as amended at 51 FR 32060, Sept. 9, 1986; 56 FR 52435, Oct. 18, 1991; 57 FR 6480, Feb. 25, 1992; 61 FR 19800, May 2, 1996]

§ 201.55 Calculation of insurance claim payment.

The lender will be reimbursed in an amount not to exceed 90 percent of its loss on any eligible loan up to the amount of insurance coverage in the lender's insurance coverage reserve account established by the Secretary under §201.32, if the insurance claim is

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made in accordance with the requirements of this part. The amount of the insurance claim payment shall be computed as follows:

(a) *Property improvement loans.* For property improvement loans, the insurance claim payment shall be 90 percent of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the terms of the note executed for any loan application that is approved prior to the effective date of these regulations, and calculated according to the actuarial method for all loans for which loan applications are approved on or after the effective date of these regulations). Where the lender has proceeded against the secured property under § 201.51(a)(2), the unpaid amount of the loan obligation shall be reduced by the proceeds received from the property's sale or disposition, after deducting the following:

(i) The balances due on any obligations senior to the Title I loan obligation; and

(ii) Customary and reasonable expenses for foreclosure and disposition, as determined by the Secretary.

(2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(4) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed \$500.

(5) The amount of expenses for recording the assignment of the security to the United States.

(b) *Manufactured home loans.* For manufactured home loans, the insurance claim payment shall be 90 percent of the sum of the following amounts:

(1) The unpaid amount of the loan obligation (net unpaid principal and the uncollected interest earned to the date of default, calculated according to the

actuarial method), after deducting the following amounts:

(i) The best price obtainable for the property after lawful repossession or foreclosure, as determined in accordance with § 201.53;

(ii) All amounts to which the lender is entitled after the date of default from any source relating to the property, including but not limited to such items as rent, other income, recourse recovery against the dealer, hazard insurance benefits, secured interest protection insurance benefits, and rebates on prepaid insurance premiums; and

(iii) Amounts retained by the lender after the date of default, including amounts held or deposited to the account of the borrower or to which the lender is entitled under the loan transaction, and which have not been applied in reduction of the borrower's indebtedness.

(2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes, and site rental, as appropriate), plus actual costs not to exceed \$1,000 per module for removing and transporting the home to a dealer's lot or other off-site location.

(4) The amount of a sales commission paid to a dealer, real estate agent or other third party for the resale of the repossessed or foreclosed manufactured home and/or lot. Where the home is resold on-site, the commission shall not exceed 10 percent of the sales price. Where the home is resold off-site, the commission shall not exceed seven percent of the sales price.

(5) For manufactured home lot loans, and for combination loans where both the foreclosed manufactured home and

lot are classified as realty, the amount of:

(i) State or local real estate taxes, ground rents, and municipal water and sewer fees or liens, prorated to the date of disposition of the property;

(ii) Special assessments which are noted on the loan application or which become liens after the insurance is issued, prorated to the date of disposition of the property;

(iii) Premiums for hazard insurance on the manufactured home, prorated to the date of disposition of the property; and

(iv) Transfer taxes imposed upon any deeds or other instruments by which the property was acquired by the lender.

(6) The amount of uncollected court costs, including fees paid for issuing, serving, and filing a summons.

(7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed \$1,000.

(8) The amount of expenses for recording the assignment of the security to the United States, and for costs of repossession or foreclosure other than attorney's fees and those incurred under paragraph (b)(3), but not to exceed costs which are customary and reasonable in the jurisdiction where the repossession or foreclosure takes place, as determined by the Secretary.

[50 FR 43523, Oct. 25, 1985, as amended at 54 FR 10537, Mar. 14, 1989; 54 FR 36266, Aug. 31, 1989; 56 FR 52435, Oct. 18, 1991; 57 FR 30395, July 9, 1992; 61 FR 19800, May 2, 1996]

Subpart G—Debts Owed to the United States Under Title I

SOURCE: 58 FR 47379, Sept. 9, 1993, unless otherwise noted.

§ 201.60 General.

(a) *Applicability.* The provisions in this subpart apply to the collection of debts owed to the United States arising out of the Title I program. These debts include, but are not limited to:

(1) Amounts owed on loans assigned to the United States by insured lenders as the result of defaults by borrowers;

(2) Unpaid insurance charges owed by lenders; and

(3) Unpaid obligations of lenders arising from repurchase demands.

(b) *Departmental debt collection regulations.* Except as modified by this subpart, collection of debts arising out of the Title I program is subject to the Department's debt collection regulations in subpart C of 24 CFR part 17.

§ 201.61 Claims against debtors—principal amount of debt.

(a) *Liability.* A debtor is liable to the Secretary for the principal amount of the debt, as described in paragraphs (b), (c), or (d) of this section, as appropriate.

(b) *Property improvement notes.* In the case of an assigned note for a property improvement loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(a)(1) of this part, plus amounts described in §§ 201.55(a) (3), (4), (5).

(c) *Manufactured home notes.* In the case of an assigned note for a manufactured home loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(b)(1) of this part, plus amounts described in §§ 201.55(b) (3) through (8).

(d) *Assigned judgments.* In the case of a judgment obtained by the lender on a property improvement loan or a manufactured home loan and assigned to the Secretary, the principal amount of the debt is the amount of the judgment.

§ 201.62 Claims against debtors—interest, penalties, and administrative costs.

(a) *Interest.* In addition to the principal amount of the debt, the debtor is liable for the payment of interest. Interest accrues on the principal amount of the debt as of the date of default, as defined in § 201.2(h) of this part, as follows:

(1) In the case of a debt based upon the assignment of a defaulted note, interest is assessed at the lesser of the rate specified in the note or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(2) In the case of a debt based upon the assignment of a judgment, interest is assessed at the lesser of the rate specified in the judgment or the United

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States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

§ 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

Subpart A—General Requirements

- Sec.
- 202.1 Purpose.
- 202.2 Definitions
- 202.3 Approval status for lenders and mortgagees.
- 202.4 Request for determination of compliance.
- 202.5 General approval standards.

Subpart B—Classes of Lenders and Mortgagees

- 202.6 Supervised lenders and mortgagees.
- 202.7 Nonsupervised lenders and mortgagees.
- 202.8 Sponsored third-party originators.
- 202.9 Investing lenders and mortgagees.
- 202.10 Governmental institutions, Government-sponsored enterprises, public housing agencies and State housing agencies.

Subpart C—Title I and Title II Specific Requirements

- 202.11 Title I.
- 202.12 Title II.

AUTHORITY: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

SOURCE: 62 FR 20082, Apr. 24, 1997, unless otherwise noted.

Subpart A—General Requirements

§ 202.1 Purpose.

This part establishes minimum standards and requirements for approval by the Secretary of lenders and

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mortgagees to participate in the Title I and Title II programs.

§ 202.2 Definitions.

Act means the National Housing Act (12 U.S.C. 1702 *et seq.*).

Claim means a single family insured mortgage for which the Secretary pays an insurance claim within 24 months after the mortgage is insured.

Default means a single family insured mortgage in default for 90 or more days within 24 months after the mortgage is insured.

Lender or *Title I lender* means a financial institution that:

(a) Holds a valid Title I Contract of Insurance and is approved by the Secretary under this part as a supervised lender under § 202.6, a nonsupervised lender under § 202.7, an investing lender under § 202.9, or a governmental or similar institution under § 202.10; or

(b) Is under suspension or held a Title I contract that has been terminated but remains responsible for servicing or selling Title I loans that it holds and is authorized to file insurance claims on such loans.

Loan or *Title I loan* means a loan authorized for insurance under Title I of the Act.

Mortgage, Title II mortgage or insured mortgage means a mortgage or loan insured under Title II or Title XI of the Act.

Mortgagee or *Title II mortgagee* means a mortgage lender that is approved to participate in the Title II programs as a supervised mortgagee under § 202.6, a nonsupervised mortgagee under § 202.7, an investing mortgagee under § 202.9, or a governmental or similar institution under 202.10.

Multifamily mortgagee means a mortgagee approved to participate only in multifamily Title II programs, except that for purposes of § 202.8(b)(1) the term also means a mortgagee approved to participate in both single family and multifamily Title II programs.

Normal rate means the rate of defaults and claims on insured mortgages for the geographic area served by a HUD field office, or other area designated by the Secretary, in which a mortgagee originates mortgages.