

not rent the housing or any part thereof covered by the mortgage for transient or hotel purposes, together with the mortgagor's certification under oath that the housing or any part thereof covered by the proposed mortgage will not be rented for transient or hotel purposes. For the purpose of this subchapter rental for transient or hotel purposes shall mean (a) rental for any period less than 30 days or (b) any rental if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linen, and bellboy service.

**§ 203.16a Mortgagor and mortgagee requirement for maintaining flood insurance coverage.**

(a) *In general.* (1) The requirements of this section apply if a mortgage is to cover property improvements that:

(i) Are located in an area designated by the Federal Emergency Management Agency (FEMA) as a floodplain area having special flood hazards;

(ii) Are otherwise determined by the Commissioner to be subject to flood hazard; or

(iii) Are not otherwise covered by the flood insurance standard for condominium projects established under § 203.43b(d)(6)(iii) or (i)(1).

(2) No mortgage may be insured that covers property improvements located in an area that has been identified by FEMA as an area having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and flood insurance under the National Flood Insurance Program (NFIP) is available with respect to such property improvements. Such requirement for flood insurance shall be effective one year after the date of notification by FEMA to the chief executive officer of a flood prone community that such community has been identified as having special flood hazards.

(3) For purposes of this section, property improvement means a dwelling and related structures/equipment essential to the value of the property and subject to flood damage.

(b) *Flood insurance obligation.* The mortgagor and mortgagee shall be obli-

gated, by a special condition to be included in the mortgage commitment, to obtain and maintain either NFIP flood insurance or private flood insurance coverage on the property improvements.

(c) *Insurance policy.* A mortgagee may accept a flood insurance policy in the form of the standard policy issued under the NFIP or a private flood insurance policy as defined in this section, and the mortgagee shall be named as the loss payee for flood insurance benefits. A mortgagee may determine that a private flood insurance policy meets the definition of private flood insurance in this section, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: "This policy meets the definition of private flood insurance contained in 24 CFR 203.16a(e) for FHA-insured mortgages."

(d) *Duration and amount of coverage.* The flood insurance must be maintained during such time as the mortgage is insured in an amount at least equal to the lowest of the following:

(1) 100 percent replacement cost of the insurable value of the improvements, which consists of the development or project cost less estimated land cost; or

(2) The maximum amount of NFIP insurance available with respect to the particular type of property; or

(3) The outstanding principal balance of the loan.

(e) *Private flood insurance defined.* The term "private flood insurance" means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

(ii) In the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;

## § 203.17

## 24 CFR Ch. II (4–1–23 Edition)

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under a standard flood insurance policy under the National Flood Insurance Program for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under a standard flood insurance policy under the National Flood Insurance Program, the policy must, at a minimum:

(i) Define the term “flood” to include the events defined as a “flood” in a standard flood insurance policy under the National Flood Insurance Program;

(ii) Contain the coverage specified in a standard flood insurance policy under the National Flood Insurance Program, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under a standard flood insurance policy under the National Flood Insurance Program, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in a standard flood insurance policy under the National Flood Insurance Program. Any exclusions other than those in a standard flood insurance policy under the National Flood Insurance Program may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by a standard flood insurance policy under the National Flood Insurance Program or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in a standard flood insurance policy under the National Flood Insurance Program;

(3) Includes all of the following:

(i) A requirement for the insurer to give 45 days’ written notice of cancella-

tion or non-renewal of flood insurance coverage to:

(A) The insured;

(B) The mortgagee, if any; and

(C) Federal Housing Administration (FHA), in cases where the mortgagee has assigned the loan to FHA in exchange for claim payment;

(ii) Information about the availability of flood insurance coverage under the National Flood Insurance Program;

(iii) A mortgage interest clause similar to the clause contained in a standard flood insurance policy under the National Flood Insurance Program; and

(iv) A provision requiring an insured to file suit not later than 1 year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the National Flood Insurance Program.

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### ELIGIBLE MORTGAGES

#### § 203.17 Mortgage provisions.

(a) *Mortgage form.* (1) The term “mortgage” as used in this part, except § 203.43c, shall have the meaning given in Section 201 of the National Housing Act, as amended (12 U.S.C. 1707).

(2)(i) The mortgage shall be in a form meeting the requirements of the Commissioner. The Commissioner may prescribe complete mortgage instruments. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner

(A) Shall require specific language in the mortgage which shall be uniform for every mortgage, and

(B) May also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs.

(ii) Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.