

## Subpart B—Contract Rights and Obligations

### DEFINITIONS

#### § 203.251 Definitions.

As used in this subpart, the following terms shall have the meaning indicated:

(a) *Commissioner* means the Federal Housing Commissioner or his authorized representative.

(b) *Act* means the National Housing Act, as amended.

(c) *FHA* means the Federal Housing Administration.

(d) *Mortgage* is defined at § 203.17(a)(1).

(e) *Mortgagor* means the original borrower under a mortgage and his heirs, executors, administrators and assigns.

(f) *Mortgagee* means the original lender under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g)–(h) [Reserved]

(i) *Insured mortgage* means a mortgage which has been insured as evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the credit instrument for insurance by the Commissioner.

(j) *Contract of Insurance* means the agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this subpart and the applicable provisions of the Act.

(k) *MIP* means the mortgage insurance premium paid by the mortgagee to the Commissioner in consideration of the contract of insurance.

(l)–(m) [Reserved]

(n) *Open-end advance* means an insured advance made by an approved mortgagee in connection with a previously insured mortgage, pursuant to an open-end provision in the mortgage.

(o) *Open-end insurance charge* means the charge paid by the mortgagee to the Commissioner in consideration of the insurance of an open-end advance.

(p) *Beginning of amortization* means the date one month prior to the date of the first monthly payment to principal and interest.

(q) *Maturity* means the date on which the mortgage indebtedness would be extinguished if paid in accordance with periodic payments provided for in the mortgage.

(r) *Debentures* means registered, transferable securities in certificated or book entry form which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

(s) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(t) *TOTAL* is an acronym that stands for “Technology Open to Approved Lenders.” TOTAL is a mortgage scorecard based on a mathematical equation that is to be used within an automated underwriting system (AUS). TOTAL is a tool to assist the mortgagee in managing its workflow and expediting the endorsement process, and is not a substitute for the mortgagee’s reasonable consideration of risk and credit worthiness. Direct Endorsement mortgagees using TOTAL remain solely responsible for the underwriting decision.

[36 FR 24508, Dec. 22, 1971, as amended at 37 FR 8661, Apr. 29, 1972; 41 FR 49734, Nov. 10, 1976; 49 FR 12697, Mar. 30, 1984; 53 FR 34282, Sept. 6, 1988; 59 FR 49815, Sept. 30, 1994; 61 FR 36265, July 9, 1996; 68 FR 65826, Nov. 21, 2003]

### ENDORSEMENT AND CONTRACT OF INSURANCE

#### § 203.255 Insurance of mortgage.

(a) *Mortgages with firm commitments.* For applications for insurance involving mortgages not eligible to be originated under the Direct Endorsement program under § 203.5, or under the Lender Insurance program under § 203.6, the Secretary will either endorse the mortgage for insurance by issuing a Mortgage Insurance Certificate, provided that the mortgagee is in compliance with the firm commitment, or will electronically acknowledge that the mortgage has been insured.

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(b) *Endorsement with Direct Endorsement processing.* For applications for insurance involving mortgages originated under the Direct Endorsement program under § 203.5, the mortgagee shall submit to the Secretary, within 60 days after the date of closing of the loan or such additional time as permitted by the Secretary, properly completed documentation and certifications as listed in this paragraph (b):

(1) Property appraisal upon a form meeting the requirements of the Secretary (including, if required, any additional documentation supporting the appraised value of the property under § 203.37a), or a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

(2) An application for insurance of the mortgage in a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed mortgage complies with HUD underwriting requirements, and incorporates each of the underwriter certification items that apply to the mortgage submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees, except that where the TOTAL Mortgage Scorecard is used by the mortgagee, and the TOTAL Mortgage Scorecard has determined that the application represents an acceptable risk under terms and conditions agreed to by the FHA, a Direct Endorsement underwriter shall not be required to certify that the underwriter has personally reviewed the credit application (including the analysis performed on any worksheets). The following re-

quirements are also applicable to the use of the TOTAL Mortgage Scorecard:

(i) Mortgagees and vendors must certify to compliance with these requirements:

(A) *Permissible users.* Only automatic underwriting systems (AUSs) developed, operated, owned, or used by FHA-approved Direct Endorsement mortgagees, Fannie Mae, or Freddie Mac, may access TOTAL, and only FHA-approved mortgagees will be able to obtain risk-assessments using TOTAL;

(B) *Limitation on use.* Results from TOTAL must not be used as the basis for rejecting any mortgage applicant. Mortgagees must provide full manual underwriting for mortgage applicants when TOTAL returns a “refer” risk score.

(C) *Vendor and mortgagee requirements.* Both mortgagees and vendors must:

(1) Use TOTAL to process FHA and other loan products specified by the FHA Commissioner only and for no other purpose;

(2) Implement quality control procedures for TOTAL usage and provide, at FHA’s request, reports and loan samples that enable FHA to evaluate program operation;

(3) Not use TOTAL to direct mortgagees into other non-FHA product offerings (this requirement does not relieve a mortgagee from its obligations under § 203.10 concerning informed consumer choice for prospective FHA mortgagees);

(4) Not disassemble, decompile, reverse engineer, derive or otherwise reproduce any part of the source code or algorithm in TOTAL;

(5) Not provide feedback messages that conflict with the Equal Credit Opportunity Act; and

(6) Comply with any additional HUD/FHA requirements or procedures that are applicable to the Scorecard and may be issued through handbooks, mortgagee letters, TOTAL User Guides, or TOTAL Developers Guide following appropriate advance notification, where applicable.

(ii) *Loss of privilege to use TOTAL.* Mortgagees and AUS vendors found to violate the requirements applicable to

the use of TOTAL may have their access to TOTAL and all associated privileges terminated upon appropriate notice in accordance with the following procedure:

(A) *Notice.* HUD will provide a mortgagee or vendor with a 30-day notice of a violation and loss of privilege. The notice will state the nature of the violation, the effective date of the loss of the privilege, and the duration of the loss of the privilege. The notice will become effective on the date provided in the notice, unless the mortgagee or vendor appeals the violation and loss of privilege in accordance with paragraph (b)(5)(ii)(B) of this section.

(B) *Appeal.* A party receiving a notice of violation may appeal to the Deputy Assistant Secretary for Single Family Housing (DAS-SFH), or his or her designee, before the effective date of the notice by providing evidence to refute the violation. The loss of privilege is stayed until the DAS-SFH, or designee, notifies the party that the loss of privilege has been affirmed, rescinded, or modified.

(6) Where applicable, a certificate under oath and contract regarding use of the dwelling for transient or hotel purposes;

(7) Where applicable, a certificate of intent to occupy by military personnel;

(8) Where a mortgage for an existing property is to be insured under section 221(d)(2) of the National Housing Act, a letter from the appropriate local government official that the property meets applicable code requirements;

(9) Where an individual water or sewer system is being used, an approval letter from the local health authority indicating approval of the system in accordance with §200.926d(f) of this chapter;

(10) For proposed construction if the mortgage (excluding financed mortgage insurance premium) exceeds a 90 percent loan to value ratio, evidence that the mortgagee qualifies for a higher ratio loan under one of the applicable provisions in the appropriate regulations;

(11) A mortgage certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee who is making the certification has personally reviewed

the mortgage documents and the application for insurance endorsement, and certifying that the mortgage complies with the requirements of paragraph (b) of this section. The certification shall incorporate each of the mortgagee certification items that apply to the mortgage loan submitted for endorsement, as set forth in the applicable handbook or similar publication that is distributed to all Direct Endorsement mortgagees;

(12) For a Home Equity Conversion Mortgage under part 206 of this chapter, the additional documents required by §206.15 of this chapter; and

(13) The documentation required under §203.37a providing that:

(i) The seller is the owner of record; and

(ii) That more than 90 days elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the FHA mortgage insurance.

(14) Such other documents as the Secretary may require.

(c) *Pre-endorsement review for Direct Endorsement.* Upon submission by an approved mortgagee of the documents required by paragraph (b) of this section, the Secretary will review the documents and determine that:

(1) The mortgage is executed on a form which meets the requirements of the Secretary;

(2) The mortgage maturity meets the requirements of the applicable program;

(3) The stated mortgage amount does not exceed the maximum mortgage amount for the area as most recently announced by the Secretary, except for mortgages under 24 CFR part 206;

(4) All documents required by paragraph (b) of this section are submitted;

(5) All necessary certifications are made in accordance with paragraph (b) of this section;

(6) There is no mortgage insurance premium, late charge or interest due to the Secretary; and

(7) The mortgage was not in default when submitted for insurance or, if submitted for insurance more than 60 days after closing whether the mortgage shows an acceptable payment history.

In addition, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to § 203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Lender insurance—(1) Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under § 203.6, the mortgagee is responsible for performing a pre-insurance review that would otherwise be performed by HUD under § 203.255(c) on the documents that would otherwise be submitted to HUD

under § 203.255(b). The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(g) *Indemnification—(1) General.* By insuring the mortgage, a Lender Insurance mortgagee agrees to indemnify HUD, in accordance with this paragraph.

(2) *Definition of origination.* For purposes of indemnification under this paragraph, the term "origination" means the process of creating a mortgage, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the mortgagee endorsing the mortgage note for FHA insurance.

(3) *Serious and material violation.* The mortgagee shall indemnify HUD for an FHA insurance claim paid within 5 years of mortgage insurance endorsement, if the mortgagee knew or should have known of a serious and material violation of FHA origination requirements, such that the mortgage loan should not have been approved and endorsed by the mortgagee and irrespective of whether the violation caused the mortgage default. Such a serious and material violation of FHA requirements in the origination of the mortgage may occur if the mortgagee failed to, among other actions:

(i) Verify the creditworthiness, income, and/or employment of the mortgagor in accordance with FHA requirements;

(ii) Verify the assets brought by the mortgagor for payment of the required down payment and/or closing costs in accordance with FHA requirements; or

(iii) Address property deficiencies identified in the appraisal affecting the health and safety of the occupants or the structural integrity of the property in accordance with FHA requirements, or

(iv) Ensure that the appraisal of the property serving as security for the mortgage loan satisfies FHA appraisal requirements, in accordance with § 203.5(e).

(4) *Fraud or misrepresentation.* The mortgagee shall indemnify HUD for an insurance claim if the mortgagee knew or should have known that fraud or misrepresentation was involved in connection with the origination of the mortgage, regardless of whether the fraud or misrepresentation caused the mortgage default and regardless of when an insurance claim is filed.

(5) *Demand for indemnification.* The demand for indemnification will be made by either the Secretary or the Mortgagee Review Board. Under indemnification, the Lender Insurance mortgagee agrees to either abstain from filing an insurance claim, or reimburse FHA if a subsequent holder of the mortgage files an insurance claim and FHA suffers a financial loss.

[57 FR 58348, Dec. 9, 1992; 58 FR 13537, Mar. 12, 1993, as amended at 60 FR 42759, Aug. 16, 1995; 61 FR 36265, July 9, 1996; 62 FR 30227, June 2, 1997; 63 FR 29507, May 29, 1998; 68 FR 23376, May 1, 2003; 68 FR 65827, Nov. 21, 2003; 69 FR 5, Jan. 2, 2004; 77 FR 3605, Jan. 25, 2012; 77 FR 51469, Aug. 24, 2012]

#### § 203.256 Insurance of open-end advance.

Insurance on an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance, the date of insurance, and the regulations under which the advance is insured.

#### § 203.257 Creation of the contract.

The mortgage shall be an insured mortgage from the date of the issuance

of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgement to the mortgagee that the mortgage is insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

[62 FR 30227, June 2, 1997]

#### § 203.258 Substitute mortgagors.

(a) *Selling mortgagor.* Except as provided in paragraph (d) of this section, the mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, only if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under § 203.43h or § 203.43i only if the mortgagor is to occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)).

(2) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part (except a mortgage referred to in paragraph (b)(1) of this section), only if the substitute mortgagor is to occupy the dwelling as a principal residence or as a secondary residence (as these terms are defined in § 203.18(f)) or if the substitute mortgagor is an eligible non-occupant mortgagor (as defined in § 203.18(f)).

(3) With respect to any mortgage covering a dwelling to be occupied as a secondary residence, the loan to value ratio may not exceed 85 percent of the greater of:

(i) The appraised value of the property at the time the mortgage is accepted for insurance; or

(ii) The appraised value of the property at the time approval of a substitute mortgagor is requested.

(c) *Applicability—current mortgages.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor only if the mortgage