

§ 203.41

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§ 203.41 Free assumability; exceptions.

(a) Definitions. As used in this section:

(1) Low- or moderate-income housing means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) Eligible governmental or nonprofit program means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) Legal restrictions on conveyance means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

- (i) Be void or voidable by a third party;
- (ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to mortgagor efforts to convey;
- (iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property if a conveyance is attempted;
- (iv) Be subject to the consent of a third party;
- (v) Be subject to limits on the amount of sales proceeds retainable by the seller; or
- (vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) Tax-exempt bond financing means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or

any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.

(5) Eligible nonprofit organization means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

- (i) Two years experience as a provider of low- or moderate-income housing;
- (ii) A voluntary board; and
- (iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) Policy of free assumability with no restrictions. A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) Exception for eligible governmental or nonprofit programs. Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) Exception for eligible governmental or nonprofit programs—specific policies. For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgaged or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and

Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor may be required to pay a portion of the sales proceeds to a governmental body or an eligible nonprofit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 203.45 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, rights under an option to purchase, preemptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or organization approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only to the extent necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) The mortgagor for a rehabilitation loan insured under § 203.50 of this part may hold title subject to a condition subsequent, provided that the holder of the right of entry for condition broken also executes the mortgage, and that the right is exercisable only for failure by the mortgagor to complete the rehabilitation or occupy the property as agreed by the mortgagor.

(8) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 203.17(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of

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paragraph (b) of this section, mortgages insured on certain Indian land or Hawaiian home lands under sections 247 and 248 of the National Housing Act and §§ 203.43h and 203.43i of this part, or on property in the Northern Mariana Islands or American Samoa, shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

[58 FR 42648, Aug. 11, 1993; 59 FR 15112, Mar. 31, 1994]

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, or group of similar rental properties, in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The State or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the

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dwelling is subject to any insured mortgage.

[56 FR 27692, June 17, 1991, as amended at 61 FR 36264, July 9, 1996]

§ 203.43 Eligibility of miscellaneous type mortgages.

(a) A mortgage which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage may be accepted for insurance if:

(1) Executed in connection with the sale by the Government, or any agency or official thereof, of any housing acquired or constructed under Public Law 849, Seventy-sixth Congress, as amended; Public Law 781, Seventy-sixth Congress, as amended; or Public Law 9, 73 or 353, Seventy-seventh Congress, as amended (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof); or

(2) Executed in connection with the sale by the Public Housing Administration, or by any public housing agency with the approval of the said Administration, or any housing (including any property acquired, held or constructed in connection with such housing or to serve the inhabitants thereof) owned or financially assisted pursuant to the provisions of Public Law 671, Seventy-sixth Congress; or

(3) Executed in connection with the sale by the Government, or any agency or official thereof, or any of the so-called Greenbelt towns, or parts thereof, including projects, or parts thereof, known as Greenhills, OH; Greenbelt, MD; and Greendale, WI, developed under the Emergency Relief Appropriation Act of 1935; or of any of the village properties or employee's housing under the jurisdiction of the Tennessee Valley Authority; or of any housing under the jurisdiction of the Department of the Interior located within the town area of Coulee Dam, WA, acquired by the United States for the construction, operation, and maintenance of Grand Coulee Dam and its appurtenant works or of any permanent housing under the jurisdiction of the Department of the Interior constructed under the Boulder