

## § 203.43a

residence or secondary residence, as these terms are defined in § 203.18(f); or

(ii) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than \$50. In the case of a graduated payment mortgage, the reduction in regular monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed.

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner; and

(5) The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(d)-(f) [Reserved]

(g) The provisions of § 203.28 shall not apply to mortgages insured under this section.

(h) The provisions of § 203.38 shall not apply to mortgages of the character described in paragraph (b) of this section and at the time any such mortgage is insured there must be located on the mortgaged property a dwelling unit designed principally for residential use for not more than eight families.

(i)-(j) [Reserved]

(k) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the National Housing Act.

[36 FR 24508, Dec. 22, 1971, as amended at 45 FR 30602, May 8, 1980; 47 FR 29525, July 7, 1982; 52 FR 4139, Feb. 10, 1987; 52 FR 37287, Oct. 6, 1987; 52 FR 44861, Nov. 23, 1987; 53 FR 8880, Mar. 18, 1988; 55 FR 34805, Aug. 24, 1990; 55 FR 38033, Sept. 14, 1990; 61 FR 36264, July 9, 1996]

### § 203.43a Eligibility of mortgages covering housing in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, construction, or purchase of property located in an older declining urban area shall be eligible for insurance under this subpart sub-

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ject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner:

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for adequate housing for families of low and moderate income.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

(d) For restrictions against approving mortgage insurance for a certain category of newly legalized alien, see 24 CFR part 49.

[36 FR 24508, Dec. 22, 1971, as amended at 55 FR 18493, May 2, 1990]

### § 203.43b Eligibility of mortgages on single-family condominium units.

(a) *Definitions.* As used in this part:

(1) *Condominium Association (Association)* means the organization, regardless of its formal legal name that consists of homeowners within a Condominium Project for the purpose of managing the financial and common-area assets.

(2) *Condominium Project* means the project in which one-family dwelling units are attached, semi-detached, detached, or manufactured housing units, and in which owners hold an undivided interest in the Common Elements.

(3) *Condominium Unit* means real estate consisting of a one-family dwelling unit in a Condominium Project.

(4) *Common Elements* means the Condominium Project's common areas and facilities including: Underlying land and buildings, driveways, parking areas, elevators, outside hallways, recreation and landscaped areas, and other elements described in the condominium declaration.

(5) *Rental for Transient or Hotel Purposes* shall have the meaning given in section 513(e) of the National Housing Act (12 U.S.C. 1731b(e)).

(6) *Single-Unit Approval* means approval of one unit in an unapproved Condominium Project under paragraph (i) of this section.

(7) *Site Condominium* means:

(i) A Condominium Project that consists entirely of single-family detached dwellings that have no shared garages or any other attached buildings; or

(ii) A Condominium Project that:

(A) Consists of single family detached or horizontally attached (townhouse) dwellings where the unit consists of the dwelling and land; and

(B) Is encumbered by a declaration of condominium covenants or condominium form of ownership and does not contain any manufactured housing units.

(b) *Eligibility*. A mortgage secured by a Condominium Unit shall be eligible for insurance under section 203 of the National Housing Act if it meets the requirements of this subpart, except as modified by this section.

(c) *Approval required*. To be eligible for insurance under this section, a Condominium Unit must be located in a Condominium Project approved by HUD or a DELRAP mortgagee approved under § 203.8, or meet the additional requirements for approval as a Site Condominium or Single-Unit Approval.

(d) *Condominium Project Approval: Eligibility Requirements*. To be eligible for Condominium Project approval, the Condominium Project must:

(1) Be primarily residential in nature and not be intended for rental for Transient or Hotel Purposes;

(2) Consist of units that are solely one-family units;

(3) Be in full compliance with all applicable Federal, State, and local laws with respect to zoning, Fair Housing, and accessibility for persons with disabilities, including, but not limited to, the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, where relevant;

(4) Be complete and ready for occupancy, including completion of all the

common elements of the project, and not subject to further rehabilitation, construction, phasing, or annexation, except to the extent that approval is sought for legal phasing in compliance with the requirements of paragraph (e) of this section;

(5) Be reviewed and approved by the local jurisdiction with respect to the condominium plat or similar development plan and any phases; if applicable, the approved plat or development plan must have been recorded in the land records of the jurisdiction; and

(6) Meet such further approval requirements as provided by the Commissioner through notices with respect to:

(i) Nature of title to realty or leasehold interests;

(ii) Control over, and organization of, the Condominium Association;

(iii) Minimum insurance coverage for the Condominium Project;

(iv) Planned or actual special assessments;

(v) Financial condition of the Condominium Project, including, but not limited to, the allowable percentage of units owned by a single owner or group of related owners;

(vi) Existence of any pending legal action, or physical property condition;

(vii) Acceptable maximum percentages of commercial/non-residential space, which must be within a range between 25 and 55 percent of the total floor area (which range may be changed following the procedures in paragraph (f) of this section), with the specific maximum and minimum percentages within that range to be established by HUD through notice, provided that such commercial/non-residential space does not negatively impact the residential use of the project or create adverse conditions to the occupants of individual condominium units.

(viii) Acceptable maximum percentages of units with FHA-insured mortgages, which must be within a range between 25 and 75 percent of the total number of units in the project (which range may be changed following the procedures in paragraph (f) of this section), with the specific maximum percentage of units with FHA-insured mortgages within that range to be established by HUD through notice. HUD may suspend the issuance of new FHA

case numbers for a mortgage on a property located in any project where the number of FHA-insured mortgages exceeds the maximum insurance concentration established by HUD.

(ix) Acceptable minimum level of owner occupancy, which shall include units occupied as a principal or secondary residence or sold to an owner who intends to meet such occupancy requirements. Such acceptable minimum levels shall be within a range between 30 and 75 percent of the total number of units in the project (which range may be changed following the procedures in paragraph (f) of this section), with a specific minimum percentage to be established by HUD through notice. For the sole purpose of calculating the owner-occupancy percentage under this paragraph, any unit that is occupied by the owner as his or her place of abode for any portion of the calendar year other than as a principal residence and that is not rented for a majority of the calendar year shall count towards the total number of secondary residences.

(x) Reserve requirements, provided the reserve account is funded with at least 10 percent of the monthly unit assessments, unless a lower amount is deemed acceptable by HUD based on a reserve study completed not more than 36 months before a request for a lower amount is received, or such greater amount of time as determined by the Secretary under the HUD review and approval process.

(xi) Such other matters that may affect the viability or marketability of the project or its units.

(e) Phases of a project are approvable, provided that only legal phasing is used. Individual phases must be separately sustainable as required by HUD, so that the insurance fund is not put at undue risk. In determining whether to accept legal phasing, HUD will assess the potential risk to the insurance fund and other factors that HUD may publish in notices. Phases must meet HUD's requirements for approval in paragraph (d) of this section and must at a minimum be:

(1) In a vertical building, contiguous, with all units built out and having a certificate of occupancy; or

(2) In a detached or semi-detached development, where all homes in the phase are built out and have a certificate of occupancy;

(f) The Secretary will publish any generally applicable change in the upper and lower limits of the ranges of percentages in paragraphs (d)(6)(vii) through (ix) of this section in a notice published for 30 days of public comment. After considering the comments, the Department will publish a final notice announcing the new overall upper and lower limits of the range of percentages being implemented, and the date on which the new standard becomes effective.

(g) The Secretary may grant an exception to any specifically prescribed requirements within paragraph (d)(6) of this section on a case-by-case basis in HUD's discretion, provided that:

(1) In the case of an exception to the approval requirements for the commercial/nonresidential space percentage that HUD establishes under paragraph (d)(6)(vii) of this section, any request for such an exception and the determination of the disposition of such request may be made, at the option of the requester, under the Direct Endorsement Lender Review and Approval process or under the HUD review and approval process through the applicable field office of the Department; and

(2) In determining whether to allow such an exception, factors relating to the economy for the locality in which the project is located or specific to the project, including the total number of family units in the project, shall be considered. A DELRAP lender, in determining whether to grant a requested exception, shall follow any procedures that HUD may establish.

(h) *Application for Condominium Project approval and Renewal of Approval.* (1) In order to become approved, an application for Condominium Project approval, in accordance with the requirements of the Commissioner, must be submitted to either HUD or a DELRAP mortgagee, if consistent with the mortgagee's DELRAP approval.

(2) The application will be reviewed and if all eligibility criteria have been met, the Condominium Project will be

approved and placed on the list of HUD-approved Condominium Projects.

(3) Unless otherwise specified in writing by HUD, Condominium Projects are approved for a period of 3 years from the date of placement on the list of approved condominiums. HUD may rescind a Condominium Project's approval at any time if the project fails to comply with any requirement for approval.

(4) Eligible parties may request renewal of the approval of an approved Condominium Project by submitting a request for recertification no earlier than 6 months prior to expiration of the approval or no later than 6 months after expiration of the approval. HUD shall specify the format for the recertification request, which shall allow the request to be supported by updating previously submitted information, rather than resubmission of all information. However, if the request for recertification is not submitted within 6 months after the expiration of the Condominium Project's approval, a complete, new approval application is required.

(i) *Single-Unit Approval*—(1) *Single-Unit Approvals*. Mortgagees must ensure that the Condominium Unit is located in a Condominium Project that meets the eligibility requirements for approval as set forth in paragraph (d) of this section as modified by this paragraph, except that HUD may provide that Single-Unit Approvals may be approved by meeting a subset of these standards, or less stringent standards, as stated by notice. In addition, a unit may be eligible for Single-Unit Approval if it:

(i) Is not in a Condominium Project that is on the list of FHA-approved Condominium Projects; and

(ii) Is not in a project that has been identified by HUD as subject to adverse determination for significant issues that affect the viability of the project; and

(iii) Is in a project that is complete under paragraph (d)(4) of this section;

(iv) Is not a manufactured home; and

(v) Is in a project that has at least five (5) dwelling units.

(2) *Limit on Single-Unit Approvals*. HUD may suspend the issuance of new FHA case numbers for mortgages in

Condominium Projects with Single-Unit Approvals where the number of FHA-insured mortgages exceeds the maximum insurance concentration established by HUD. Such acceptable maximum insurance concentration shall be within a range between 0 to 20 percent of units with FHA-insured mortgages for Condominium Projects with 10 or more units, with the exact percentage within that range to be determined by HUD through notice; or shall not exceed two FHA-insured mortgages for Condominium Projects with fewer than 10 units.

(j) *Site Condominium*. Site Condominiums must meet all of the requirements of paragraphs (d)(1) through (d)(5) of this section for approval, except that insurance and maintenance costs of the individual units must be the sole responsibility of the unit owner.

[84 FR 41875, Aug. 15, 2019]

**§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.**

A mortgage involving a dwelling unit in a cooperative housing development which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(n) of the National Housing Act.

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

(b) As used in connection with the insurance of mortgages under this section and § 203.437 of this part: (1) The term *mortgage* shall mean a first lien given to secure a loan made to finance the unpaid purchase price of a Corporate Certificate together with the applicable Occupancy Certificate of a cooperative ownership housing corporation in which the permanent occupancy of the dwelling units is restricted to members of such corporation, and may refer both to a security instrument creating a lien, whether called a *mortgage*, *deed of trust*, *security*