

§ 200.96

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 200.96 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing project that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners or other entity member ownership, of construction and other costs, as prescribed by the Commissioner.

(b) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

(c) Upon the Commissioner's approval of the mortgagor's certification of actual cost such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 200.97 Adjustments resulting from cost certification.

(a) *Fee simple site.* Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security

24 CFR Ch. II (4-1-03 Edition)

and owned by the mortgagor in fee, such value being prior to the construction of the improvements.

(b) *Leasehold site.* In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event shall such amount be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

(c) *Adjustment.* If the amount calculated in accordance with paragraphs (a) or (b) of this section exceeds the statutory dollar amount limits or loan ratio limits permitted by the section of Act under which the mortgage is to be insured, or program loan ratio limits established by the Commissioner in the absence of statutory limits, the amount must be reduced to the applicable limits before final endorsement.

ENDORSEMENT

§ 200.100 Insurance endorsement.

The credit instrument shall be initially and finally endorsed simultaneously for insurance pursuant to a commitment to insure upon completion. Where the advances of construction funds are to be insured pursuant to a commitment for insured advances, initial endorsement of the credit instrument shall occur before any mortgage proceeds are insured and the time of final endorsement shall be as set forth in paragraph (b) of this section.

(a) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to the Commissioner's satisfaction the Commissioner shall indicate on the original credit instrument the total of all advances approved for insurance and again endorse such instrument.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or

lender shall be bound from the date of initial endorsement, whether the initial and final endorsement occur simultaneously or are split, by the provisions of the Contract Rights and Obligations set forth in the respective regulations for each section of the Act, as follows: Section 207 of the Act (24 CFR part 207); Section 213 of the Act (24 CFR part 213); Section 220 of the Act (24 CFR part 220); Section 221 of the Act (24 CFR part 221); Section 231 of the Act (24 CFR part 231); Section 232 of the Act (24 CFR part 232); Section 234 of the Act (24 CFR part 234); Section 241 of the Act (24 CFR part 241); Section 242 of the Act (24 CFR part 242); title XI of the Act (24 CFR part 244).

§ 200.101 Mortgage lien certificate.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire project, including any equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

REGULATION OF MORTGAGORS

§ 200.105 Mortgagor supervision.

(a) As long as the Commissioner is the insurer or holder of the mortgage, the Commissioner shall regulate the mortgagor by means of a regulatory agreement providing terms, conditions and standards established by the Commissioner, or by such other means as the Commissioner may prescribe.

(b) The Commissioner may delegate to the mortgagee or other party the Commissioner's authority, in whole or in part, in accordance with the terms, conditions and standards established by the Commissioner in any executed

Regulatory Agreement or other instrument granting the Commissioner supervision of the mortgagor.

[61 FR 14399, Apr. 1, 1996, as amended at 65 FR 61074, Oct. 13, 2000]

§ 200.106 Projects with limited distribution mortgagors and program assistance.

(a) *Regulation as limited distribution mortgagors.* In addition to regulation under § 200.105, limited distribution mortgagors for projects receiving "assistance within the jurisdiction of the Department" (as defined in § 4.3 of this title) may be regulated by the Commissioner as to additional matters, by regulation or otherwise, including as to the amount of the permissible distribution to the mortgagor.

(b) *Increased distributions.* The Commissioner may permit increased distributions of surplus cash, in excess of the amounts the Commissioner otherwise permits for limited distribution mortgagors, to a limited distribution mortgagor who participates in a HUD-approved initiative or program to preserve housing stock with below-market rents as affordable housing. The increased distribution will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(c) *Pre-emption.* Any State or local law or regulation that restricts distributions to an amount lower than permitted by the Commissioner under authority of this section is preempted to the extent provided in section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[65 FR 61074, Oct. 13, 2000]

Subpart B—Electronic Submission of Required Data for Mortgage Defaults and Mortgage Insurance Claims for Insured Multifamily Mortgages

SOURCE: 64 FR 4769, Jan. 29, 1999, unless otherwise noted.