

## § 203.51

(k) In the case of a dwelling (1) to be occupied neither as a principal residence nor as a secondary residence and (2) where the loan is approved for a limit higher than the 85 percent set forth in paragraph (f)(1)(iii) of this section, the eligible non-occupant mortgagor (as defined in §203.18(f)(3)) shall certify to the Commissioner that:

(1) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before a due date approved by the Commissioner, except with the prior written approval of the Commissioner;

(2) The mortgagor agrees that, if the property is not sold before a due date approved by the Commissioner to a purchaser, acceptable to the Commissioner, who will occupy the property, assume personal liability, and agree to pay the mortgage indebtedness, any amount held in escrow, trust, or special account under paragraph (j) of this section will be applied in reduction of the outstanding principal amount of the mortgage as of the due date approved by the Commissioner;

(3) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph (k), shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

(1) *Rehabilitation loan consultants.* HUD maintains a list of qualified consultants, in accordance with §§200.190 through 200.193 of this title. When the borrower elects to use the services of a consultant, the lender must select a consultant on the list to perform one or more of the following tasks:

(1) Conduct a preliminary feasibility analysis before or after the submission of a sales contract;

(2) Prepare the cost estimate, work write-up, and architectural exhibits required for the rehabilitation of the property;

(3) Conduct a plan review; and

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(4) Conduct the draw inspections for the release of funds during the construction phase of the project.

[45 FR 33966, May 21, 1980, as amended at 45 FR 76378, Nov. 18, 1980; 50 FR 19926, May 13, 1985; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 55 FR 34806, Aug. 24, 1990; 57 FR 58347, Dec. 9, 1992; 58 FR 41003, July 30, 1993; 59 FR 13882, Mar. 24, 1994; 62 FR 30226, June 2, 1997; 67 FR 52381, Aug. 9, 2002]

### § 203.51 Applicability.

The provisions of §§203.18 (a), (c), (d), (e)(1), and (f); §203.29(c); §203.31; §203.43(c); 203.43(k); §203.43c(g); §203.43d(a), §203.43g(a)(1); §203.43j(e); §203.45(g); §203.49(h); §203.50(f); and §203.50(k) of this subpart apply to mortgages insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after September 24, 1990; or

(2) In accordance with the Direct Endorsement program, if the underwriter of the mortgagee signs the appraisal report or master appraisal report for the property on or after September 24, 1990; or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after September 24, 1990.

[55 FR 34806, Aug. 24, 1990, as amended at 57 FR 58347, Dec. 9, 1992; 61 FR 36453, July 10, 1996]

### § 203.52 Acceptance of individual residential water purification equipment.

If a property otherwise eligible for insurance under this part does not have access to a continuing supply of safe and potable water without the use of a water purification system, the requirements of this section must be complied with as a condition to acceptance of the mortgage for insurance. The mortgagee must provide appropriate documentation with the submission for insurance endorsement to address each of the requirements of this section.

(a) *Equipment.* Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to the local or state health authority.

(b) *Certification by local (or state) health authority.* A local (or state) health authority certification must be submitted to HUD which certifies that:

(1) A point-of-entry or point-of-use water purification system is currently in operation on the property. If the system in operation employs point-of-use equipment, the purification system must be employed on each water supply source (faucet) serving the property. Where point-of-entry systems are used, separate water supply systems carrying untreated water for flushing toilets may be constructed.

(2) The system is sufficient to assure an uninterrupted supply of safe and potable water adequate to meet household needs.

(3) The water supply, when treated by the equipment, meets the requirements of the local (or state) health authority, and has been determined to meet local or state quality standards for drinking water. If neither state nor local standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(4) There exists a Plan providing for the monitoring, servicing, maintenance, and replacement of the water equipment, which Plan meets the requirements of paragraph (f) of this section.

(c) *Mortgagor notice and certification.*

(1) The prospective mortgagor must have received written notification, before the mortgagor signed a sales contract, that the property has a hazardous water supply that requires treatment in order to remain safe and acceptable for human consumption. The notification to the mortgagor must identify specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(2) The mortgagor must have received, with the notification described in paragraph (c)(1) of this section, a written good faith estimate of the maintenance and replacement costs of

the equipment necessary to assure continuing safe drinking water.

(3) A copy of the notification statement (including cost estimates), dated before the date of the sales contract, and signed by the prospective mortgagor to acknowledge its receipt, must accompany the submission for insurance endorsement. If a sales contract is signed in advance of the disclosure required by this paragraph, another sales contract must be executed after the information is provided to the prospective mortgagor and he or she has acknowledged receipt of the disclosure.

(4) The prospective mortgagor must sign a certification, substantially in the form set out in this paragraph (c)(4), at the time the application for mortgage credit approval is signed. This certification must be submitted to HUD:

Mortgagor's Certificate. I hereby acknowledge and understand that the home I am purchasing has a water purification system which I am responsible for maintaining.

I understand that the individual water supply is unsafe for consumption unless the system is operating properly. I am aware that if I do not properly maintain the system, the water supply will not be purified or treated properly, thereby rendering the water supply unsafe for consumption.

I also understand that the Department of Housing and Urban Development does not warrant the condition of the property, will not give me any money for repairs to the water purification system, and has relied upon the local (or state) health authority to assure that the water supply, when processed by properly maintained equipment, is acceptable for human use and consumption.

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[Mortgagor's signature and date]

(d) *Service contract.* Before mortgage closing, the mortgagor must enter into a service contract with an organization or individual specifically approved by the local (or state) health authority to carry out the provisions of the required Plan for servicing, maintenance, repair and replacement of the water purification equipment. A copy of the signed service contract must be provided to HUD.

(e) *Escrow for maintenance and replacement.* The mortgagee must establish and maintain an escrow account which provides for the accumulation of funds paid with the mortgagor's monthly mortgage payment adequate

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to assure proper servicing, maintenance, repair and replacement of the water purification equipment. The amount to be collected and escrowed by the mortgagee shall be based upon information provided by the manufacturer for the maintenance and replacement of the water purification equipment and for other charges anticipated by the service contractor. The initial monthly escrow amount shall be stated in the Plan. Disbursements from the account will be limited to costs associated with the normal servicing, maintenance, repair or replacement of the water purification equipment. Disbursements may only be made to the service contractor or its successor, to equipment suppliers, to the local (or state) health authority for the performance of testing or other required services, or to another entity approved by the health authority. So long as water purification remains necessary and the mortgage is insured by HUD, the mortgagee must maintain the escrow account.

(f) *Approved Plan.* A Plan, in the form of a contract entered into by the mortgagor and mortgagee and approved by the local (or state) health authority, must set out conditions that must be met by the parties as a condition to insurance of the mortgage by HUD. To be approved by the health authority:

(1) The Plan must set forth the respective responsibilities to be assumed by the mortgagor and the mortgagee, as well as the other entities who will implement the Plan, i.e., the health authority and the service contractor. In particular:

(i) The Plan must set out the responsibilities of the health authority for monitoring and enforcing performance of the service contractor, including any successor contractor that the health authority may later have occasion to name. By its approval of the Plan, the health authority documents its acceptance of these responsibilities, and the Plan should so indicate;

(ii) The Plan must provide for the monitoring of the operation of the water purification equipment, as well as for servicing (including disinfecting), and for repairing and replacing the system, as frequently as necessary, taking into consideration the

system's design, anticipated use, and the type and level of contaminants present. Installation, servicing, repair and replacement of the water purification system must be performed by an individual or organization approved for the purpose by the local (or state) health authority and identified in the Plan. In meeting the requirements of paragraph (f)(1)(ii) of this section, the Plan may incorporate by reference specific terms and conditions of the service contract required under paragraph (d) of this section.

(iii) Under the Plan, responsibility for monitoring the performance of the service contractor and for assuring that the water purification system is properly serviced, repaired, and replaced rests with the local (or state) health authority that has given its approval to the Plan. The Plan must confer on the health authority all powers necessary to effect compliance by the service contractor. The health authority's powers shall include the authority to notify the mortgagor of any noncompliance by the service contractor. The plan must provide that, upon any notification of noncompliance received from the health authority, the mortgagor shall have the right to discharge the service contractor for cause and to appoint a successor organization or individual as service contractor; and

(iv) The Plan must provide for the mortgagor to make periodic escrow payments necessary for the servicing, maintenance, repair and replacement of the water purification system, and for the mortgagee to disburse funds from the escrow account as required, to the appropriate party or parties.

(2) The Plan must provide that if the dwelling served by the water purification system is refinanced, or is sold or otherwise transferred with a HUD-insured mortgage, the Plan will:

(i) Continue in full force and effect;

(ii) Impose an obligation on the mortgagor to notify any subsequent purchaser or transferee of the necessity for the water purification system and for its proper maintenance, and of the obligation to make escrow payments; and

(iii) Require the mortgagor to furnish the purchaser with a copy of the Plan, before any sales contract is signed.

(g) *Periodic analysis.* Any Plan developed in accordance with this section must provide that an analysis of the water supply shall be obtained from the local (or state) health authority no less frequently than annually, but more frequently, if determined at any time to be necessary by the health authority or by the service contractor.

(Approved by the Office of Management and Budget under control number 2502-0474)

[57 FR 9609, Mar. 19, 1992; 57 FR 27927, June 23, 1992]

#### INSURED TEN-YEAR PROTECTION PLANS (PLAN)

SOURCE: Sections 203.200-203.209 issued at 55 FR 41021, Oct. 5, 1990, unless otherwise noted.

#### § 203.200 Definitions.

As used in § 203.201 through § 203.209, the following terms shall have the meaning indicated:

*Coverage contract* means a warranty certificate, insurance policy, or other document of similar purpose (including any endorsements), delivered to the homeowner at the time of closing or settlement which is issued by a State, a builder, a warranty company, or an insurance company and which defines the terms and conditions under which a Plan will provide warranty coverage of the covered property.

*Construction deficiencies* are defects (not of a structural nature) in a dwelling covered by an insured ten-year protection plan that are attributable to poor workmanship or to the use of inferior materials which result in the impaired functioning of the dwelling or some part thereof. Defects resulting from homeowner abuse or from normal wear and tear are not considered construction deficiencies.

*Insurance backing (or insurance backer)* means the direct insurance or reinsurance of potential Plan obligations by one or more insurance companies.

*Insured ten-year protection plan or Plan* means an agreement between a homeowner and a Plan issuer which, among other things, contains warranties regarding the construction and structural integrity of the home-

owner's one- to four-family dwelling covered by an FHA-insured mortgage. A Plan issuer may be a State, an insurance company, a warranty company, a Risk Retention Group as defined in 15 U.S.C. 3901a(4)(A)-(H) (Supp. IV 1986), a builder, or by any other HUD-approved entity with the required insurance backing. A Plan must specify in its coverage contract the obligations and duties of the Plan issuer to the homeowner (or to the homeowner's successor in interest) with respect to the warranties covering the dwelling.

*Plumbing* means all components of piped on-site gas, fluid, or fluid-based systems that are not separately covered by manufacturers' warranties, and includes any on-site water supply or sewage disposal systems.

*State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

*Structural defect* is actual physical damage to the designated load-bearing portions of a home caused by failure of such load-bearing portions that affects their load-bearing functions to the extent that the home becomes unsafe, unsanitary, or otherwise unlivable. Load-bearing components for the purpose of defining structural defects are defined as follows: Footing and foundation systems; beams; girders; lintels; columns; load-bearing walls and partitions; roof framing systems; and floor systems, including basement slabs in homes constructed in designated areas (see § 203.207) containing expansive or collapsible soils. Damage to the following nonload-bearing portions of the home is not considered a structural defect: Roofing; drywall and plaster; exterior siding; brick, stone, or stucco veneer; floor covering material; wall tile and other wall coverings; nonload-bearing walls and partitions; concrete floors in attached garages; electrical; plumbing, heating, cooling and ventilation systems; appliances, fixtures and items of equipment; paint; doors and windows; trim, cabinets, hardware, and insulation. Repair of a structural defect is limited to:

(1) The repair of damage to designated load-bearing portions of the