

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(c) *Cost computation.* The term *actual cost of the improvements* shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expenses approved by the Commissioner.

(d) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) *Incontestability.* Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) *Records.* The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the contractor to keep similar records and, upon request by the Commissioner, both shall make available for examination such records, including any collateral agreements.

(g) *Certificate of public accountant.* Where required by the Commissioner, each certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or prior to December 31, 1970, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with gen-

erally accepted auditing standards to the extent deemed necessary to verify the actual costs.

ELIGIBLE BORROWERS

§ 241.625 Eligible borrowers.

In order to be eligible as a borrower under this subpart, the applicant shall be a profit, limited distribution, non-profit, or cooperative owner of a multifamily housing project which is not covered by a mortgage insured or held by the Secretary and which the Commissioner has determined to be an acceptable risk in that energy conservation or solar energy benefits to be derived outweigh the risks of possible loss of the Federal Government.

§ 241.626 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

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SPECIAL REQUIREMENTS

§ 241.630 Maximum insurance against loss.

A loan insured under this subpart shall be insured for 90 percent of any loss incurred by the person holding the note for the loan.

§ 241.635 Regulatory agreement.

Any borrower obligated on the note for any loan insured under this subpart shall be regulated or restricted in a manner and on a form prescribed by the Secretary as to rents or sales, charges, capital structure, rate of return and methods of operation of the multifamily project to such an extent and in such manner as to provide reasonable rental to tenants and a reasonable return on the investment until the termination of all obligations of the Secretary under the contract of insurance.