

(3) *Cost certification.* In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability.* Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion.* The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow.* The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be remedied within the time period required by the HFA.

(e) *Mortgagee of record.* The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

#### § 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

### Subpart E—Mortgage and Closing Requirements; HUD Endorsement

#### § 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

- (a) In fee simple;

- (b) Under a renewable lease of not less than 99 years; or

- (c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

#### § 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

#### § 266.405 Title.

(a) *Eligibility of title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence.* The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

#### § 266.410 Mortgage provisions.

(a) *Form.* The mortgage and note must be executed on a form approved by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (*i.e.*, regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a "change in use" as that term is employed in the mortgage since the property will continue to