

§266.415

have a residential use both before and after conversion.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and owner agree to a modification of the terms of the mortgage (e.g., to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

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

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner's authorized Departmental representative for insurance of the mortgage by endorsement of the mortgage note. The note must provide that the mortgage is insured under section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR part 266 in effect on the date of endorsement. The note must also specify the date of endorsement, i.e., the date of HUD endorsement of the project mortgage, and the risk of loss assumed by the HFA and by HUD.

(b) *Closing docket.* The HFA's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in §266.210, and certifications and information as follows:

(1) Information concerning the mortgage amount and term, location, number and type of units, income and expenses, rents, projects and market occupancy percentages, value/replacement cost, interest rate, and similar statistical information in accordance

with the Commissioner's administrative procedures.

(2) Copies of the amortization schedule, Note and Risk-Sharing Agreement.

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards and loan terms and conditions as approved by HUD).

(4) At the time of final endorsement, a certification for periodic advances cases, if submitted for final endorsement, that advances were made proportionate to construction progress.

(5) A copy of the HFA-approved cost certification if the project is submitted for final endorsement.

(6) A certification that equal employment requirements are followed.

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan and found it acceptable.

(8) A certification that a dedicated account, if required, has been increased in accordance with § 266.110(b).

(9) Certifications required under § 266.415 concerning liens and contractual obligations.

(10) Copies of the Hazard Insurance Policy with a clause making the loss payable to the HFA.

(11) For projects subject to Davis-Bacon prevailing requirements under § 266.225, the certification and information concerning payment of prevailing wage rates required by § 266.225(d).

(12) Certified copies of mortgage (deed of trust) with attached regulatory agreement, and note for HUD files.

Subpart F—Project Management and Servicing

§ 266.500 General.

The HFA will have full responsibility for the administration of the provisions of this subpart and for managing and servicing projects insured under this part. The HFA is responsible for monitoring and determining the com-

pliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

§ 266.505 Regulatory agreement requirements.

(a) *General.* (1) The HFA must execute a Regulatory Agreement, in recordable form, between the mortgagor and the HFA to be in force for the duration of the insured mortgage and note or bond. The Regulatory Agreement must include a description of the property. The Regulatory Agreement must be incorporated by reference into the mortgage and recorded with the mortgage.

(2) The Regulatory Agreement executed between the HFA and the mortgagor must be binding upon the mortgagor and any of its successors and assigns and upon the HFA and any of its successors for so long as the mortgage is insured by HUD or HUD holds an HFA debenture issued in connection with a claim arising from the insured mortgage. The HFA may not assign the Regulatory Agreement.

(3) The HFA will enforce the Regulatory Agreement and take actions against any mortgagors who violate its provisions. Such actions may involve a declaration of default and application to any court for specific performance of the agreement.

(b) *Requirements.* The Regulatory Agreement must require the mortgagor to comply with the provisions of this part and obligate the mortgagor, among other things, to:

(1) Make all payments due under the mortgage and note/bond.

(2) Where necessary, establish a sinking fund for future capital needs.

(3) Maintain the project as affordable housing, as defined in § 266.5.

(4) Continue to use dwelling units for their original purposes.

(5) Comply with such other requirements as may be established by the HFA and set forth in the Regulatory Agreement.

(6) [Reserved]