

his or her creditors for his or her account and with his or her consent.

[41 FR 1172, Jan. 6, 1976, as amended at 45 FR 29278, May 2, 1980; 48 FR 12085, Mar. 23, 1983; 49 FR 21320, May 21, 1984; 53 FR 34284, Sept. 6, 1988. Redesignated at 60 FR 56500, Nov. 8, 1995]

**§ 235.1214 Mortgage lien.**

(a) Except as provided in paragraph (b) of this section, a mortgagor must establish that after the mortgage offered for insurance has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With the prior approval of the Commissioner, the mortgaged property may be subject to a second mortgage made or insured, or other secondary lien held, by a Federal, State or local governmental agency or instrumentality. However, the required monthly payments under the insured mortgage and the second mortgage or lien shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner.

[50 FR 20908, May 21, 1985; 50 FR 26696, June 28, 1985. Redesignated at 60 FR 56500, Nov. 8, 1995]

**§ 235.1216 Late charge.**

The mortgage may provide for the collection by the mortgagee of a late charge, not to exceed four percent of the mortgagor's share of each payment more than 15 days in arrears, to cover servicing and other costs attributable to the receipt of payments from the mortgagors after the date upon which payment is due. Such charge shall not be included in the assistance payment.

[42 FR 29306, June 8, 1977. Redesignated at 60 FR 56500, Nov. 8, 1995]

**§ 235.1218 Additional eligibility requirements.**

(a) *Mortgage amount.* It must be in an amount not exceeding the lesser of:

(1) The unpaid principal balance due on the mortgage being refinanced, including any advances properly made by the mortgagee under the terms of the mortgage and any current interest due and delinquent interest not to exceed two months; and

(2) The original principal amount of the mortgage being refinanced.

(b) *Maturity date.* It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the terms for the refinancing mortgage shall be rounded down to the next whole year.

(c) *Interest rate.* (1) The 235(r) interest rate is the rate negotiated between the parties. Such rate shall not exceed the GNMA coupon rate plus a margin to be determined by the Secretary. The GNMA coupon rate is based on the closing price for three-month forward delivery contracts closest to par but not exceeding par on one of the following dates, whichever rate is higher:

(i) The date the Direct Endorsement mortgagee's underwriter signs the Mortgage Credit Analysis Worksheet (form HUD-92900 WS); or

(ii) The date the mortgage is closed.

(2) The Secretary will pay the mortgagee a discount as part of the refinancing costs. The maximum discount points will be determined by the Secretary.

(3) For a mortgage to be insurable under this subpart, the interest rate on the mortgage must be less than the interest rate shown on the mortgage being refinanced. The Secretary shall determine how much less the interest rate on the mortgage shall be in order for it to be insured.

(d) *Mortgagors' Incentive and Refinancing Costs.* The incentive to the mortgagors and the refinancing costs that the Secretary will pay for mortgages insured under this subpart are as follows:

(1) An amount determined by the Secretary to be an incentive to the mortgagor to refinance a mortgage insured under section 235; and

(2) Amounts as determined by the Secretary for discounts, loan origination fees, closing costs, and other costs