

days after closing whether the mortgage shows an acceptable payment history.

In addition, the Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the mortgage fails to meet a statutory or regulatory requirement. If, following this review, the mortgage is determined to be eligible, the Secretary will endorse the mortgage for insurance by issuance of a Mortgage Insurance Certificate. If the mortgage is determined to be ineligible, the Secretary will inform the mortgagee in writing of this determination, and include the reasons for the determination and any corrective actions that may be taken.

(d) *Submission by mortgagee other than originating mortgagee.* If the originating mortgagee assigns the mortgage to another approved mortgagee before pre-endorsement review under paragraph (c) of this section, the assignee may submit the required documents for pre-endorsement review in the name of the originating mortgagee. All certifications must be executed by the originating mortgagee (or its underwriter, if appropriate). The purchasing mortgagee may pay any required mortgage insurance premium, late charge and interest.

(e) *Post-Endorsement review for Direct Endorsement.* Following endorsement for insurance, the Secretary may review all documents required by paragraph (b) of this section. If, following this review, the Secretary determines that the mortgage does not satisfy the requirements of the Direct Endorsement program, the Secretary may place the mortgagee on Direct Endorsement probation, or terminate the authority of the mortgagee to participate in the Direct Endorsement program pursuant to §203.3(d), or refer the matter to the Mortgagee Review Board for action pursuant to part 25 of this title.

(f) *Lender Insurance—(1) Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under §203.6, the mortgagee is responsible for performing a pre-insurance review that

meets HUD's requirements. HUD will directly inform participating mortgagees of its minimum requirements for pre-insurance review. The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

(2) *Recordkeeping.* Mortgagees must maintain records, including origination files, in a manner and for a time period to be prescribed by the Assistant Secretary for Housing—Federal Housing Commissioner, and must make them available to authorized HUD staff upon request.

(3) *Insuring the mortgage.* If, following this review, the mortgage is determined to be eligible, the mortgagee will electronically submit all required data to HUD regarding the mortgage. HUD's electronic system will acknowledge that the mortgage has been insured. HUD's electronic system may also issue a notice to the mortgagee that the mortgage has been selected for post-insurance technical review, and that the HUD case binder must be sent to the identified HUD office.

(4) *Indemnification.* By insuring the mortgage, the mortgagee agrees to indemnify HUD under the conditions of section 256(c) of the National Housing Act (12 U.S.C. 1717z-21(c)).

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#### § 203.256 Insurance of open-end advance.

Insurance on an open-end advance will be evidenced by delivery of a certificate stating the amount of the advance, the date of insurance, and the regulations under which the advance is insured.

#### § 203.257 Creation of the contract.

The mortgage shall be an insured mortgage from the date of the issuance of a Mortgage Insurance Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgement to the mortgagee that the mortgage is

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insured, as applicable. The Commissioner and the mortgagee are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the insured mortgage, including the provisions of the regulations in this subpart and of the Act.

[62 FR 30227, June 2, 1997]

**§ 203.258 Substitute mortgagors.**

(a) *Selling mortgagor.* Except as provided in paragraph (d) of this section, the mortgagee may effect the release of a mortgagor from personal liability on the mortgage note, only if it obtains the Commissioner's approval of a substitute mortgagor, as provided by this section.

(b) *Purchasing mortgagor.* (1) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under § 203.43h or § 203.43i only if the mortgagor is to occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)).

(2) The Commissioner may approve a substitute mortgagor with respect to any mortgage insured under this part (except a mortgage referred to in paragraph (b)(1) of this section), only if the substitute mortgagor is to occupy the dwelling as a principal residence or as a secondary residence (as these terms are defined in § 203.18(f)) or if the substitute mortgagor is an eligible non-occupant mortgagor (as defined in § 203.18(f)).

(3) With respect to any mortgage covering a dwelling to be occupied as a secondary residence, the loan to value ratio may not exceed 85 percent of the greater of:

(i) The appraised value of the property at the time the mortgage is accepted for insurance; or

(ii) The appraised value of the property at the time approval of a substitute mortgagor is requested.

(c) *Applicability-current mortgages.* Paragraph (b) of this section applies to the Commissioner's approval of a substitute mortgagor only if the mortgage executed by the original mortgagor was insured:

(1) Pursuant to a conditional commitment or master conditional com-

mitment issued on or after December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after December 15, 1989;

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or after December 15, 1989.

(d) *Applicability—earlier mortgages.* If the mortgage was insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after February 5, 1988, but before December 15, 1989; or

(2) In accordance with the Direct Endorsement program, where the approved underwriter of the mortgagee signed the appraisal report or master appraisal report for the property on or after February 5, 1988, but before December 15, 1989, 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 February 5, 1988, but before December 15, 1989, the Commissioner may approve a substitute mortgagor with respect to the mortgage only if the substitute mortgagor is to occupy the dwelling as a principal residence or a secondary residence (as these terms are defined in § 203.18(f)), or is an eligible non-occupant mortgagor (as defined in the following sentence), or if the mortgage has a principal balance that is not more than 75 percent of the greater of

(i) the appraised value of the property at the time the mortgage is accepted for insurance, or (ii) the appraised value of the property at the time approval of a substitute mortgagor is requested. For purposes of this paragraph (d), the term *eligible non-occupant mortgagor* has the meaning given in § 203.18(f), except that paragraph (d)(3)(ii)(A) and (B) of this section apply in place of § 203.18(f)(3) (i) and (ii).

(A) A public entity, as provided in section 214 or 247 of the National Housing Act; and

(B) A private nonprofit or public entity, as provided in section 221(h) or 235(j) of the National Housing Act.