

## § 203.50

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(mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), or 203.47 (growing equity mortgages).

(j) *Aggregate amount of mortgages insured.* The aggregate number of adjustable rate mortgages insured pursuant to this section and 24 CFR part 234 in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under Title II of the National Housing Act during the preceding fiscal year.

(k) *Insurance authority.* Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 251 of the National Housing Act.

[49 FR 23584, June 6, 1984, as amended at 53 FR 8881, Mar. 18, 1988; 54 FR 111, Jan. 4, 1989; 55 FR 34805, Aug. 24, 1990; 61 FR 36264, July 9, 1996; 69 FR 11501, Mar. 10, 2004; 70 FR 16082, Mar. 29, 2005; 72 FR 40050, July 20, 2007]

### § 203.50 Eligibility of rehabilitation loans.

A rehabilitation loan which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under section 203(k) of the National Housing Act.

(a) For the purpose of this section:

(1) The term *rehabilitation loan* means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing:

(i) The rehabilitation of an existing one-to-four unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(2) The term *rehabilitation* means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary and improvements for accessibility to the handicapped) or repair of a structure, or facilities in connection with a structure, and may in-

clude the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project.

(b) The provisions of § 203.18 (except as otherwise provided in paragraphs (f) (1) and (2) of this section) and § 203.43c shall not apply to loans insured under this section.

(c) The loan shall cover a dwelling which was completed more than one year preceding the date of the application for mortgage insurance and which was approved for mortgage insurance prior to the beginning of rehabilitation.

(d)(1) The buildings on the mortgaged property must, upon completion of rehabilitation, conform with standards prescribed by the Secretary.

(2) Improvements or repairs made under this section must be designed to meet cost-effective energy conservation standards prescribed by the Secretary.

(e) The loan transaction shall be an acceptable risk as determined by the Commissioner.

(f) The loan may not exceed an amount which, when added to any outstanding indebtedness of the borrower that is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1)(i) The limits prescribed in §§ 203.18(a) (1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1)); (ii) the limits prescribed in §§ 203.18(a) (1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2)); (iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in §§ 203.18(a) (1) and (3), as the Secretary may prescribe (in the case of an eligible non-occupant mortgagor as defined in § 203.18(f)(3)); (iv) the limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation; or

(2) The limits prescribed in the authorities listed in this paragraph (f),

based upon 110 percent of the Commissioner's estimate of the value of the property after rehabilitation.

(g) The loan limitation prescribed by paragraph (f)(2) of this section shall not be applicable where a unit of local government demonstrates to the satisfaction of the Commissioner that:

(1) The property is located within an area which is subject to a community sponsored program of concentrated redevelopment or revitalization, and,

(2) The loan limitation prescribed by paragraph (f)(2) of this section, prevents the utilization of the program to accomplish rehabilitation in the subject area, and,

(3) The interests of the mortgagor and the Commissioner are adequately protected.

(h) Insurance may be available for advances made during rehabilitation or upon completion of rehabilitation, according to the procedures in §203.5, 203.6, or 203.7 (as applicable).

(i) Rehabilitation loans which do not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property need not be a first lien on the property but shall not be junior to any lien other than a first mortgage. The provisions of §§203.15, 203.19, 203.23, 203.24, 203.26, and 203.43j shall not be applicable to such loans.

(j) The Commissioner may insure advances made by the mortgagee during rehabilitation if the following conditions are satisfied:

(1) The mortgage shall be a first lien on the property.

(2) The mortgagor and the mortgagee shall execute a rehabilitation loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made.

(3) The advances shall be made as provided in the rehabilitation loan agreement.

(4) The principal amount of the mortgage shall be held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor or his creditors as provided in the rehabilitation loan agreement.

(5) The loan shall bear interest at the rate prescribed in §203.20 on the

amount advanced to the mortgagor or its creditors, and the amount held in an account or trust for the benefit of the mortgagor.

(6) If paragraph (k) of this section applies, the rehabilitation loan agreement shall restrict advancement to the mortgagor, or to creditors other than the mortgagee, so that any loan proceeds in excess of the 85 percent set forth in paragraph (f)(1)(iii) of this section shall not be advanced until the property is sold to a purchaser described in paragraph (k)(2) of this section.

(k) In the case of a dwelling (1) to be occupied neither as a principal residence nor as a secondary residence and (2) where the loan is approved for a limit higher than the 85 percent set forth in paragraph (f)(1)(iii) of this section, the eligible non-occupant mortgagor (as defined in §203.18(f)(3)) shall certify to the Commissioner that:

(1) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the property before a due date approved by the Commissioner, except with the prior written approval of the Commissioner;

(2) The mortgagor agrees that, if the property is not sold before a due date approved by the Commissioner to a purchaser, acceptable to the Commissioner, who will occupy the property, assume personal liability, and agree to pay the mortgage indebtedness, any amount held in escrow, trust, or special account under paragraph (j) of this section will be applied in reduction of the outstanding principal amount of the mortgage as of the due date approved by the Commissioner;

(3) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph (k), shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

(1) *Rehabilitation loan consultants.* HUD maintains a list of qualified consultants, in accordance with §§200.190 through 200.193 of this title. When the

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borrower elects to use the services of a consultant, the lender must select a consultant on the list to perform one or more of the following tasks:

(1) Conduct a preliminary feasibility analysis before or after the submission of a sales contract;

(2) Prepare the cost estimate, work write-up, and architectural exhibits required for the rehabilitation of the property;

(3) Conduct a plan review; and

(4) Conduct the draw inspections for the release of funds during the construction phase of the project.

(m) With regard to loans under this section executed on or after December 27, 2005, the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

[45 FR 33966, May 21, 1980, as amended at 45 FR 76378, Nov. 18, 1980; 50 FR 19926, May 13, 1985; 52 FR 48201, Dec. 21, 1987; 53 FR 8881, Mar. 18, 1988; 53 FR 9869, Mar. 28, 1988; 55 FR 34806, Aug. 24, 1990; 57 FR 58347, Dec. 9, 1992; 58 FR 41003, July 30, 1993; 59 FR 13882, Mar. 24, 1994; 62 FR 30226, June 2, 1997; 67 FR 52381, Aug. 9, 2002; 70 FR 37156, June 28, 2005]

### § 203.51 Applicability.

The provisions of §§ 203.18 (a), (c), (d), (e)(1), and (f); § 203.29(c); § 203.31; § 203.43(c); 203.43(k); § 203.43c(g); § 203.43d(a), § 203.43g(a)(1); § 203.43j(e); § 203.45(g); § 203.49(h); § 203.50(f); and § 203.50(k) of this subpart apply to mortgages insured:

(1) Pursuant to a conditional commitment or master conditional commitment issued on or after September 24, 1990; or

(2) In accordance with the Direct Endorsement program, if the underwriter of the mortgage signs the appraisal report or master appraisal report for the property on or after September 24, 1990; 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 September 24, 1990.

[55 FR 34806, Aug. 24, 1990, as amended at 57 FR 58347, Dec. 9, 1992; 61 FR 36453, July 10, 1996]

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### § 203.52 Acceptance of individual residential water purification equipment.

If a property otherwise eligible for insurance under this part does not have access to a continuing supply of safe and potable water without the use of a water purification system, the requirements of this section must be complied with as a condition to acceptance of the mortgage for insurance. The mortgagee must provide appropriate documentation with the submission for insurance endorsement to address each of the requirements of this section.

(a) *Equipment.* Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to the local or state health authority.

(b) *Certification by local (or state) health authority.* A local (or state) health authority certification must be submitted to HUD which certifies that:

(1) A point-of-entry or point-of-use water purification system is currently in operation on the property. If the system in operation employs point-of-use equipment, the purification system must be employed on each water supply source (faucet) serving the property. Where point-of-entry systems are used, separate water supply systems carrying untreated water for flushing toilets may be constructed.

(2) The system is sufficient to assure an uninterrupted supply of safe and potable water adequate to meet household needs.

(3) The water supply, when treated by the equipment, meets the requirements of the local (or state) health authority, and has been determined to meet local or state quality standards for drinking water. If neither state nor local standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(4) There exists a Plan providing for the monitoring, servicing, maintenance, and replacement of the water equipment, which Plan meets the requirements of paragraph (f) of this section.