

**§ 235.1210**

(c) To be eligible under this part, the mortgagor or cooperative member must meet the requirements for the disclosure and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter. For requirements regarding the signing and submitting of consent forms by mortgagors and cooperative members for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 200, subpart V, of this chapter. Eligibility for assistance under this subpart also requires citizenship or eligible immigration status, as determined in accordance with part 200, subpart G, of this chapter, except that citizenship or eligible immigration status shall not be required of a mortgagor whose assistance contract was executed before June 19, 1995 and remains unchanged after that date.

(Approved by the Office of Management and Budget under control numbers 2502-0204, 2502-0267, 2502-0268, and 2577-0083)

[41 FR 1172, Jan. 6, 1976, as amended at 41 FR 51011, Nov. 19, 1976; 43 FR 60156, Dec. 26, 1978; 46 FR 56422, Nov. 17, 1981; 51 FR 11218, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 54 FR 39695, Sept. 27, 1989; 56 FR 7530, Feb. 22, 1991; 60 FR 14832, Mar. 20, 1995. Redesignated and amended at 60 FR 56500, Nov. 8, 1995]

**§ 235.1210 Recapture of assistance payments.**

(a) With respect to any mortgage insured under this part pursuant to a firm commitment issued on or after May 27, 1981, the mortgagor shall repay to the Secretary any assistance received under this part in the amount provided in paragraph (b) of this section when the mortgagor:

(1) Disposes of the property or a homeowner not qualified to receive assistance payments, or

(2) Has rented the property (or rented the owner's unit in the case of a two- to four-family property) for more than one year, or

(3) Requests a release of the Secretary's lien on the property.

(b) The amount of assistance to be repaid by the mortgagor shall be the lesser of the amount of assistance actually received under this part (other than handling charges) or 50 percent of the net appreciation of the property.

**24 CFR Ch. II (4-1-08 Edition)**

(c) The term *net appreciation of the property* as used in this section means any increase in the value of the property over the purchase price, as of the time the mortgage is accepted for insurance, less the reasonable costs of sale and the reasonable costs of improvements made to the property.

(d) The mortgagor shall execute such documents as the Secretary shall require to assure repayment to the Secretary of the amounts provided in this paragraph.

[48 FR 40714, Sept. 19, 1983. Redesignated at 60 FR 56500, Nov. 8, 1995]

**§ 235.1212 Mortgage provisions.**

(a) *Mortgage form.* (1) The term *mortgage* as used in this part has the same meaning as defined in either § 203.17(a)(1) of this chapter, § 203.43c(b)(1) of this chapter, or § 234.1(d) of this chapter, as applicable, and may refer both to a security instrument creating a lien, whether called a *mortgage, deed of trusts, security deed* or other term common in a jurisdiction, as well as the credit instrument, or note, secured thereby.

(2) The mortgage shall be in a form meeting the requirements of the Commissioner. For each case in which the Commissioner does not prescribe complete mortgage instruments, the Commissioner shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs. Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under the laws of the jurisdiction in which the property is located.

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in multiples of \$50.

(c) *Payments.* The mortgage shall:

(1) Come due on the first of the month.

(2) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(d) *Maturity.* The mortgage shall provide for complete amortization not to exceed 30 years from the date of the beginning of amortization of the mortgage.

(e) *Property standards.* The mortgage must be a first lien upon the property that conforms with property standards prescribed by the Commissioner.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the mortgagor or to 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