

(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

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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 incurred in connection with the refinancing.

(e) *Eligible mortgagees.* The Secretary shall determine whether this program will be open to all approved Direct Endorsement mortgagees, or only to those approved Direct Endorsement mortgagees that meet certain specified requirements. The Secretary may limit the program to a designated number of Direct Endorsement approved mortgagees if such a limitation will facilitate the most expeditious handling of these refinancing mortgages.

(f) *Eligible mortgagor.* (1) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and from whom a recertification was obtained within the preceding twelve months prior to the application for the 235(r) mortgage, or a new recertification was required prior to the execution of the mortgage credit worksheet by the direct endorsement lender, or the firm commitment was issued by HUD.

(2) The mortgagor must be an occupant of the property securing the mortgage.

(3) The mortgagor has not received payments for the costs of refinancing or the mortgagor's incentive, nor have such payments been made on his behalf, as described in paragraph (d) of this section, for a period of 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(4) The mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage, or the mortgagee has executed a HUD Notice of Suspension form that suspends the assistance payment contract from the

date of disbursement of the mortgage loan.

(5) The mortgagor has agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(6) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(7) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the monthly payments due under the mortgage by more than \$50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor to establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage and that the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34.

(8) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(g) *Monthly Payments.* The mortgage must have monthly principal and interest payments at the 235(r) interest rate that are less than the monthly payments of principal and interest on the mortgage being refinanced.

[60 FR 56500, Nov. 8, 1995]

§ 235.1220 Processing section 235(r) mortgages under the direct endorsement program.

The regulations containing the requirements which a mortgage must meet for the direct endorsement program are contained in 24 CFR 203.5 and 203.255. Under those sections, mortgages to be insured under section 235(r) must be originated through direct endorsement processing. There are several provisions of 24 CFR 203.5 and 203.255 which do not apply to section