

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 200, 232, and 241**

[Docket No. FR-3349-F-02]

RIN 2502-AF74

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Revision of FHA Multifamily Processing and Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends FHA multifamily processing regulations to: increase processing/commitment fees; recognize a feasibility processing stage for substantial rehabilitation projects and impose a fee for this processing; require the project sponsor to request a preapplication conference; and eliminate the conditional commitment processing stage for all but Section 242 hospital mortgages, and Section 223(f) acquisition/refinancing mortgages.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-2556. (This is not a toll-free telephone number.) Hearing- or speech-impaired may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act Statement**

The information collection requirements contained in § 290.45 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0029. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

A. Rule Description

This rule amends various relevant parts of title 24 of the Code of Federal Regulations to effect the following changes in its processing procedures for FHA insurance of multifamily project mortgages. This final rule is based on a proposed rule published on July 1, 1993 at 58 FR 35724. The section numbering

in this rule differs from the proposed rule. This final rule conforms to the consolidation of the FHA multifamily mortgage insurance program regulations set forth in another final rule published elsewhere in today's Federal Register.

1. Increase in Processing Fees

Multifamily mortgage insurance processing and commitment fees currently do not cover expenses incurred by the Department. A Price Waterhouse study estimates that during a 7-year period (FY 1985-FY 1991), fees collected (based on \$3/\$1,000 of the mortgage amount) covered only 68 percent to 92 percent of HUD's costs. (These costs were basically local HUD Office Housing costs—they did not include overhead costs or personnel outside of the local HUD office Multifamily Development Division.)

Implementation of the Delegated Processing program has resulted in an even greater shortfall. Under this program, HUD pays outside contractors to perform underwriting services. Fees charged by delegated processors are based on their cost of doing business, not on a percentage of the mortgage amount. The Price Waterhouse study, although based on a limited sample, indicated that fees collected by HUD covered only 61 percent of costs incurred. (Implementation of Technical Discipline Contracts (TDCs), should result in similar deficiencies in costs versus fees collected.)

Under this rule, HUD regulations are amended to more adequately cover HUD costs by increasing the aggregate fees to \$5/\$1,000 (from the current \$3/\$1,000) of the mortgage amount. This increase will be within the statutory limitation prescribed in Section 207(d) of the National Housing Act. Section 207(d) provides that appraisal and inspection charges "shall not aggregate more than 1 per centum, of the original principal face amount, of the mortgage." With the exception of Section 223(f) acquisition/refinancing mortgages, inspection fees are currently based on, and will remain at, not to exceed \$5/\$1,000 of the mortgage amount. Consequently, to remain within the statutory limitation of 1 percent, total processing/commitment fees cannot be increased by more than \$2/\$1,000 (for a total processing/commitment fee of \$5/\$1,000). This rule does not change the fees related to mortgage insurance processing and commitment for hospitals under Section 242.

2. Feasibility Processing Stage with Fee

Feasibility processing for substantial rehabilitation projects is recognized by program handbooks as an optional

processing stage but it is not recognized by regulation. For this reason, HUD is not able to charge a processing fee, even though feasibility processing requires substantially more effort than Site Appraisal and Market Analysis (SAMA) processing for new construction projects, which are covered by regulation and for which a fee is chargeable.

The inability to charge a fee has significantly contributed to the processing deficit cited above, particularly when a case drops out after the feasibility analysis is completed. In such cases, HUD also loses the opportunity to collect a fee for future processing. Furthermore, under Delegated Processing and Technical Discipline Contracts (TDCs), outside contractors must be paid, regardless of whether HUD collects a fee. Collecting a fee to help offset the costs of paying the contractors is simply a sound business practice.

Consequently, this rule describes feasibility processing for multifamily substantial rehabilitation projects and reflects long-held HUD policy and practice that issuance of a feasibility letter is not binding upon the Department. It is a generally known fact that, in cases involving substantial rehabilitation, unanticipated major structural problems may be found at a later stage and may result in a dramatic increase in the total cost of rehabilitation. Also, substantial rehabilitation can involve complex readaptation of buildings, originally constructed for a non-residential purpose, that may require major architectural changes in the scope of the work, and consequently, in the Department's conclusions relative to the feasibility of the proposed project. In addition, substantive rehabilitation may come as a result of having to make the multifamily housing projects accessible to persons with disabilities. This rule reflects current HUD policy in stating that determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at a later time. The feasibility letter may even be unilaterally terminated by the Commissioner if found necessary.

3. Preapplication Conference

One of the goals of the Office of Housing is to speed up mortgage insurance processing. Submission of complete, well-documented applications by sponsors/mortgagees is essential to expeditious processing. Only if applications are complete, and time is not wasted by going back to the sponsor/mortgagee, can processing time

goals be met. Consequently, the rule permits the local HUD Office to determine if participation in a preapplication conference is required as a condition to submission of an initial application. This requirement will apply in all cases (except for part 242 insurance on hospital mortgages, and part 241(f) insurance on equity and acquisition loans) and will include any application by a project sponsor for an operating loss loan.

During the preapplication conference, sponsors will meet with the local HUD Office staff to present a project idea, discuss program FHEO requirements and be advised of any known market or environmental concerns. Contents of the application, including required exhibits, will be identified and discussed. In addition, if the proposal is obviously ineligible for mortgage insurance, the sponsor will be so advised. If a proposal appears eligible, the local HUD Office will determine when an application can be expected so that it can consider, based on work load and other priorities, whether it might be a candidate for in-house processing, delegated processing or TDC contracting.

4. Elimination of Conditional Commitment Stage

To speed the processing cycle, the rule eliminates the conditional commitment processing stage for all applications for loans for acquisition or refinancing of existing construction pursuant to Section 223(f). Sponsors have the option of submitting an application for SAMA (or feasibility) or firm commitment processing.

As is now the case, the SAMA (or feasibility) letter is not a commitment to insure the mortgage, nor does it bind HUD to issue a firm commitment to insure. The purpose of a firm commitment also remains unchanged. It will be issued only after completion of technical processing and will evidence HUD's approval of the application.

After issuing a SAMA letter, HUD technical staff will provide liaison services to the sponsor's design architect in the development of preliminary drawings, and specifications which must be submitted within a time period set forth in the SAMA letter with a processing fee and in a form prescribed by HUD. HUD will review and comment on the drawings and specifications which will be provided to the sponsor for use in preparing the firm commitment application. The fee will be equal to \$1.00 per \$1,000 of the mortgage amount.

A preliminary work write-up and outline specifications will be required

for a feasibility application. Final documents, including final cost estimates, will be submitted at the firm commitment application stage.

5. Application Fees

The rule imposes a fee for feasibility processing (which HUD has previously performed without charge) and modifies the overall existing fee structure which currently requires an aggregate of \$3.00 per \$1,000 for all processing stages. The modified fee structure imposes an aggregate fee of \$5.00 per \$1,000 of mortgage amount, to be distributed among all processing stages.

Substantial Rehabilitation

A fee of \$3.00 per \$1,000 is charged at the feasibility stage for substantial rehabilitation projects. The balance of \$2.00 per \$1,000 will be charged at the firm commitment stage.

New Construction

A fee of \$1.00 per \$1,000 is charged at the SAMA stage, \$1.00 per \$1,000 for the review of plans and specifications, and the balance of \$3.00 per \$1,000 will be charged at the firm commitment stage.

Section 223(f) Loans

Projects to be acquired or refinanced pursuant to Section 223(f) will be subject to a conditional commitment processing fee of \$3.00 per \$1,000 and a firm commitment fee of \$2.00 per \$1,000.

Loan to Cover Operating Losses

A combined application and commitment fee of \$5 per \$1,000 of the loan amount shall be submitted with the application for firm commitment.

6. Update of Nondiscrimination Provisions

This rule also updates the nondiscrimination requirements in § 241.640 to reflect current statutory and regulatory prohibitions against discrimination on the basis of age, disability or familial status.

7. Change In Section 223(f) Inspection Fees

This final rule contains a provision not contained in the proposed rule relating to section 223(f) inspection fees. This change is being implemented as a result of changing program experience under the section 223(f) refinance program.

The nature of projects currently being considered for Section 223(f) mortgage insurance is significantly different from those typically submitted when the fee schedule for 223(f) projects was

promulgated for full and coinsurance on August 25, 1987. At that time a vast majority of the projects were near or at the regulation's upper repair limits. Currently, HUD is receiving many applications for refinance to reduce interest rates under the subject program, where project repairs are very nominal.

The August 25, 1987, regulation provides for a two-tier inspection fee schedule. One consideration against using a single-tier one percent inspection fee rate, as was recognized at the time this regulation was first issued, was that where repairs are minimal, the fee would not cover the actual cost of making the inspection. This concern is still valid. This rule does, however, replace the current rigid \$30 per dwelling unit minimum fee with authority in the Commissioner to establish a minimum project inspection fee. This fee will be periodically reviewed and may be adjusted upward or downward as necessary. Initially, the fee will be administratively set at \$500 since \$500 is the apparent minimum rate that a contractor will charge HUD for a project inspection regardless of the total work that will have to be inspected.

This change will lower the inspection fees for all projects larger than 17 dwelling units for which the repair costs are \$3,000 per dwelling unit or less. Furthermore, for the sake of uniformity this change is also being incorporated in 24 CFR 232.906(d) covering inspection fees on mortgage insurance for nursing homes and related facilities.

B. Proposed Rule and Public Response

The Department received a total of 9 comments in response to the July 1, 1993, proposed rule (58 FR 35724): eight from private mortgage companies or developers and one from a national trade organization, The National Association of Home Builders.

Seven comments expressed general approval of the rule but set forth specific objections/recommendations. Two commenters (private companies) expressed general opposition to the rule but raised very similar objections/recommendations as those generally approving of the rule.

The following specific objections/recommendations were raised in connection with the rule.

1. *Increase in Processing Fees.* Five commenters questioned the manner in which the rule raises processing fees across the board on a fixed basis without regard to the wide variations in types and size of FHA applications.

With respect to loan size a number of points were raised:

a. FHA is now priced to attract most strongly the business on which it loses money in processing—the “little” loans which it “subsidizes” by charging far less than the processing costs.

b. FHA is already now priced to be richly profitable on larger loans, which currently pay an above market price for processing to the extent they pay more than about \$20,000.

c. A price change to 0.5% will inevitably drive away larger loan business that was profitable, making the problem worse.

d. A price change to 0.5% will leave FHA still dramatically underpriced and attractive to the “little” loans, on which FHA will continue to lose money in processing.

A second objection is that the cost of processing varies greatly not only because of loan size but also because of loan type. A 223(f) refinancing request is relatively easy to process because there is an existing property with demonstrated rents and occupancy. A 221(d) loan is inherently more difficult. The property does not yet exist. Plans must be reviewed. Cost must be reviewed. Far greater judgment must be brought to bear to evaluate what levels can be prudently anticipated for rents, expenses, and vacancies.

Clearly, the cost to FHA in processing a 223(f) loan is not the same as that for a 221(d) loan. It would, therefore, be reasonable to charge more for 221(d) work than for 223(f) work. Indeed, if the underlying goal was to have the cases on which FHA presently loses money in processing bear more of their own costs, it would be entirely reasonable to thus differentiate.

One basic recommendation to address this situation would be retention of the current 0.3% fee structure with the addition of both minimum fees (so the smaller loans cover more of their processing costs, as they would be obliged to do if using any alternative financing source) and maximum fees (so as to limit the structural disincentive that currently drives the larger and more profitable business away from FHA as a source).

This would provide a “more level playing field” across the entire spectrum of loan sizes.

A similar dollar differentiation would be made with respect to refinancing as opposed to new construction or substantial rehabilitation mortgages.

HUD Response: HUD insures mortgages made by private lending institutions to finance: the construction or rehabilitation of multifamily rental housing; the purchase or refinance of existing multifamily or nursing home projects; and the construction or

rehabilitation of nursing homes, intermediate care facilities, assisted living facilities, and board and care homes. Mortgage insurance is a contingent Federal liability which is not included in computing the Federal deficit. However, it is part of the ongoing discussion about the deficit. The Federal Credit Reform Act of 1990 requires that the budgetary treatment of all direct loan and loan guarantee programs recognize, at the front end, the net cost to the Federal Government resulting from these transactions. The Department is required to estimate the amount that it might lose on all multifamily project mortgages it insures and must request “credit subsidy” as part of its budget each Fiscal Year (FY) to cover those losses. Beginning in FY 1992, each HUD budget has included a request for credit subsidy. Because of current budgetary constraints credit subsidy dollars are a scarce resource. Large and small projects use up the credit subsidy dollars at an equal rate. The Department believes this provides the level playing field referenced above.

A number of commenters indicated that the fees charged on large loans subsidize small loans. One commenter indicated that the current market price for processing a loan was about \$20,000. Other comments indicate that the increased fee will drive away larger loans and HUD will continue to lose money in processing. On the surface it would appear that the Department’s fee structure is excessive. However, no other financing source currently matches all the benefits available with HUD mortgage insurance. For example, the Section 221(d)(4) program provides mortgage insurance for the construction loan and permanent loan (for up to 40 years with a level annuity payment plan), a maximum mortgage based on 90 percent of the estimated replacement cost, and a nonrecourse loan. Further, HUD insurance is a credit enhancement that provides access to reduced financing costs and the secondary market.

2. Mandatory Preapplication Conferences

Five commenters took issue with these provisions in the rule. The consensus was that:

1. Preapplication conferences should never be *required* (and should be discouraged as a relatively counterproductive use of staff time) on all refinancing transactions. This would specifically include 223(a)(7) and 223(f) refinancings.

2. Preapplication conferences should be optional at the local HUD Office level on new construction and substantial

rehabilitation proposals. Such conferences are not universally necessary and the proposed rule would unnecessarily restrict local HUD Office flexibility in this matter. The result of requiring conferences in all cases will be wasteful and unneeded delays in FHA processing.

HUD Response: As previously stated, one of the Office of Housing’s goals is to speed up mortgage insurance processing. The submission of complete well-documented applications by sponsors/mortgagors is essential to expeditious processing. The Department cannot process loans expeditiously and meet its time goals if applications are incomplete, and time is wasted by going back to the sponsor/mortgagor. However, based on comments from Industry and the local HUD Offices, HUD realizes that a national solution like a mandatory preapplication conference does not take into account the experience level of the development team. Therefore, the Department has modified the proposed regulation to accommodate differing levels of sophistication and experience. The local HUD Office will decide, on a case-by-case basis, if a preapplication conference is necessary. The Department, however, strongly recommends a preapplication conference for all new mortgage insurance applications involving new sponsors/mortgagors.

3. Requiring Technical Liaison by HUD Staff

Two commenters said that the rule proposal requiring HUD technical staff to provide liaison services to Sponsor’s design architect in development of drawings, specifications, and cost estimates is unrealistic. They noted that the local HUD Offices they have dealt with have generally lacked the staff, expertise and time to commit to this significant undertaking.

HUD Response: Local HUD Offices are being given the tools necessary to commit to this activity. Previously, the Department provided the local HUD Office with delegated processing and technical assistance contracts to level their workload. To enhance the skill level of the local HUD Office staff, HUD is currently streamlining the underwriting process, developing computer systems that will free local HUD Office staff from the rote aspects of their duties, and providing both formal and informal training. Therefore, the Department is confident that the local HUD Offices will be able to perform this task.

4. Efficient Processing by HUD Staff

Three commenters raised the issue of efficient processing by local HUD Office staff. The following is an example of a typical comment:

Although we do not disagree with the imposition of a fee at the SAMA or Feasibility stage, we believe that those applicants who are paying fees for both SAMA or Feasibility (as appropriate) and Firm Commitment applications should, in consideration of fees paid, obtain processing within the time frames as per the HUD regulations and handbooks. Currently, this is not happening; processing times are now indeterminate. Applicants have paid fees and are unable to obtain response from the HUD Offices as to when applications will be processed and returned to the Sponsor/applicants, which is unreasonable, notwithstanding of the amount of fees charged. Such delays in processing are causing tremendous carrying costs to Sponsors, Architects, Contractors, and HUD approved lenders.

HUD Response: The Department recognizes that processing delays are costly to the Industry and to HUD. For this reason the Department is undergoing the process of reinvention and reorganization. Short term measures to reduce the workload were made available to local HUD Offices in the form of Delegated Processing and Technical Assistance Contracts. The Department is currently looking at the underwriting process to determine which activities can prudently be modified or eliminated altogether. Ultimately, the Multifamily Production Branch in the local HUD Office will have a more efficient operation.

5. Site Appraisal and Market Analysis (SAMA)

Two commenters questioned the need for a review of preliminary plans, etc., after SAMA approval. One made the following recommendation.

The proposed rule creates a new mandatory processing step for all sponsors who utilize the SAMA processing stage. This new step would occur after SAMA approval and would require sponsors to submit preliminary drawings, specifications and cost estimates, with a processing fee, to HUD for review and comment. While this step would be very useful to certain sponsors who desire HUD input on these documents, it would delay processing for those projects with designs that had previously been approved by HUD and with costs that the sponsor felt would be acceptable to HUD at the firm commitment stage. Therefore, we suggest that this step be optional at the election of the sponsor.

HUD Response: The Department needs to interact with the development team of a proposed project at this critical stage. The local HUD Office's

continuous liaison during the design development is critical for streamlining the underwriting process. However, based on Industry comments the Department has modified the process. The local HUD Office will not request the owner's cost estimates nor will it produce cost estimates during the interim period. Of course, if the development team is using a previously approved design then the local HUD Office input will be greatly reduced.

6. Replace SAMA With Feasibility Stage

One commenter made this recommendation:

I agree with your proposal to charge a fee at Feasibility comparable to the required at SAMA. I feel a better approach, however, would be to replace the SAMA stage with Feasibility for new construction as well. This system, which prevailed in the early 1970's, would give a more detailed first look which would, I believe, offer early euthanasia to infeasible projects and expedite processing of those that make it to the Firm stage.

HUD Response: The Department disagrees with this recommendation since it would slow down the processing of proposed new construction projects while at the same time increasing the sponsor's out-of-pocket cost. SAMA processing establishes the land value fully improved, the acceptability of the proposed project site, the proposed composition, number and size of the units, the market for the number of proposed units, and the acceptability of the proposed unit rents. To do feasibility processing, the sponsor would need to supply, as part of the application package, drawings and specifications. The sponsor would incur substantial cost without knowing if there was a market for the project. In turn, the Department would have to review the plans and specifications before determining a market exists for the proposed project.

7. Mortgagee Has Option To Go Directly to Final Processing Stage

One commenter recommended that the rule be revised to set forth more clearly this option of the mortgagee.

HUD Response: The Department's existing administrative policy permits combining different stages of processing. However, over the years there has been some confusion over this policy. To clarify existing Departmental policy, this rule modifies the regulations to state that at the option of the local HUD Office the SAMA/Feasibility processing may be combined with the firm commitment processing. However, HUD recommends this approach only in

the case of an experienced development team.

8. Charge Application Fees for Section 202 Projects

One commenter asked why application fees are not also charged in connection with Section 202 projects for the elderly and disabled. The commenter claimed much more time and effort go into the underwriting of such projects.

HUD Response: The Section 202/811 Capital Advance Program does not involve mortgage insurance. This program provides funding to nonprofit organizations that house the elderly and persons with disabilities, two underserved segments of the general housing population. Since the funding comes directly from the Department, there is no reason to charge any processing fees. Further, the Department recognizes that the program is labor intensive and has established a working group to look at ways to streamline the program.

C. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The economic impact of this rule is not significant, and affects small and large entities equally.

Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas on building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the order. No programmatic or policy changes result from its promulgation which would affect the existing relationship between the federal government and state and local government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR parts 200, 232, and 241 are amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. The text of § 200.40 is added to read as follows:

§ 200.40 HUD fees.

The following fees apply to mortgages to be insured under this part.

(a) *Application fee—SAMA letter (for new construction).* An application fee of \$1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of \$1 per thousand dollars of the requested mortgage amount shall

be charged for the review of plans and specifications.

(b) *Application fee—feasibility letter (for substantial rehabilitation).* An application fee of \$3 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) *Application fee—conditional commitment.* For a mortgage being insured under section 223(f) of the Act (12 U.S.C. 1715n), an application-commitment fee of \$3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment. For a mortgage being insured under section 242 of the Act (12 U.S.C. 1715z–7), an application fee of \$1.50 per thousand dollars of the amount loaned shall be paid to the Commissioner at the time the hospital proposal is submitted to the Secretary of Health and Human Services for approval.

(d) *Application fee—firm commitment: General.* (1) Except as provided in paragraph (d)(2) of this section, an application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate \$5 per thousand dollars of the requested mortgage amount to be insured. The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted pursuant to the Atomic Energy Community Act of 1955 (42 U.S.C. 2301 *et seq.*).

(2) *Application fee—firm commitment: Hospitals.* A firm-commitment fee which, when added to the application fee, shall aggregate \$3 per thousand dollars of the amount of the loan set forth in the firm commitment shall be paid within 30 days after the date of the commitment. If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of the commitment, the commitment shall expire on the 30th day.

(e) *Inspection fee.* (1) *In general.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed \$5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(i) If the case involves insurance of advances, at the time of initial endorsement; or

(ii) If the case involves insurance upon completion, before the date construction is begun.

(2) *Existing projects.* For a mortgage being insured under section 223(f) of the Act, if the application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(f) *Fees on increases—(1) In general.* Paragraph (f)(1) of this section applies to all applications except applications involving hospitals.

(i) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate \$5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(ii) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate \$5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the \$5 per thousand dollars of the amount of the increase requested.

(iii) *Loan to cover operating losses.* In connection with a loan to cover operating losses (see § 200.22), a

combined application and commitment fee of \$5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(2) *Hospitals.* Paragraph (f)(2) of this section applies to applications in connection with a mortgage to be insured under section 242 of the Act.

(i) *Increase in commitment prior to endorsement.* Upon an application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding commitment, an additional application fee of \$1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate \$3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment for the increased amount will expire and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed \$5 per thousand dollars of the amount of increase in commitment. Where insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. Where insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or within 30 days after the date of the issuance of the amended commitment, if construction has begun.

(ii) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of \$1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate \$3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed \$5 per thousand dollars of the

amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

3. The text of § 200.45 is added to read as follows:

§ 200.45 Processing of applications.

(a) *Preapplication conference.* Except for mortgages insured under section 241(f) or 242 of the Act, the local HUD

Office will determine whether participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. The project sponsor may elect (after the preapplication conference if required) to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter may be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD Office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks. At the option of the local HUD Office, the SAMA/Feasibility letter stage of processing can be combined with the firm commitment stage of processing.

(b) *Firm commitment requirement.* An application for a firm commitment must be made by an approved mortgagee for any project for which a mortgagor seeks mortgage insurance under the Act.

(c) *Staged applications.* Staged applications leading to an application for firm commitment shall be made as determined appropriate by the Commissioner, and in accordance with such terms and conditions established by the Commissioner. The intermediate stages to firm commitment may include a site appraisal and market analysis (SAMA) letter stage or a feasibility letter stage and a conditional commitment. The conditional commitment stage applies only to mortgages to be insured pursuant to section 223(f) of the Act.

(d) *Effect of SAMA letter, feasibility letter, and firm commitment—*(1) *SAMA letter.* (i) The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be

changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter:

(A) The land value fully improved (with off-site improvements installed);

(B) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units; and

(C) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

(ii) After receiving a SAMA letter, the sponsor shall submit design drawings and specifications in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on design development and the drawings and specifications. The comments will be provided to the sponsor for use in preparing a firm commitment application.

(2) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the "as is" value of the site, the detailed estimates of operating expenses and taxes, the specific unit rents, the vacancy allowance, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) *Conditional commitment.* The issuance of a Section 223(f) conditional commitment indicates completion of technical processing involving the estimated value of the property, the detailed estimates of rents, operating expenses and taxes and an estimated mortgage amount.

(e) *Term of SAMA letter, feasibility letter, and conditional commitment.* A SAMA letter, a feasibility letter, and a conditional commitment shall be

effective for whatever term is specified in the respective letter or commitment.

(f) *Rejection of an application.* A significant deviation in an application from the Commissioner's terms or conditions in an earlier stage application commitment or agreement shall be grounds for rejection. The fees paid to such date shall be considered as having been earned notwithstanding such rejection. (Approved by the Office of Management and Budget under control number 2502-0029.)

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES.

4. The authority citation 24 CFR part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

5. Section 232.906 is revised to read as follows:

§ 232.906 Processing of applications and required fees.

(a) *Processing of applications.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to submission of an initial application for either a conditional or firm commitment. After the preapplication conference an application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD Office on a HUD approved form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. No application shall be considered unless accompanied by all exhibits required by the form and program handbooks. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of any improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of \$3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by

an application-commitment fee of \$5 per thousand dollars of the requested mortgage amount to be insured less any amount previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(e) *Cross-reference.* The provisions of paragraphs (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (h) (Transfer fee), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to applications submitted under subpart E of this part.

PART 241— SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

6. The authority citation for part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-6; 42 U.S.C. 3535(d).

7. Section 241.505 is revised to read as follows.

§ 241.505 Processing of applications and required fees.

(a) *Preapplication conference.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to submission of an initial application for a firm commitment for insurance of an energy savings improvement loan on a project. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. Applications shall be submitted to the local HUD Office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of \$5 per thousand dollars of the requested loan amount to be insured.

(c) *Cross-reference.* The provisions of paragraphs (e) (Inspection fee), (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to

applications submitted under subpart E of this part.

8. Section 241.510 is revised to read as follows:

§ 241.510 Commitments

(a) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(b) *Types of firm commitment.* (1) Where the amount of the loan is \$250,000 or more, the firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(2) Where the amount of the loan is less than \$250,000, the firm commitment shall provide for insurance of the loan after completion of the improvements.

(c) *Term of commitment.* (1) A firm commitment to insure advances shall be effective for a period of not more than 60 days from the day of issuance.

(2) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(3) The term of a firm commitment may be extended in such a manner as the Commissioner may prescribe.

9. Section 241.640 is revised to read as follows:

§ 241.640 Employment discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, familial status, disability, age, or national origin.

10. Section 241.1015 is revised to read as follows:

§ 241.1015 Processing of applications and required fees.

(a) *Application.* An application for the issuance of a firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Commitment Fees.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee of \$5.00 per thousand dollars of the requested loan amount to be insured.

11. Section 241.1020 is revised to read as follows:

§ 241.1020 Commitments.

(a) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of the equity or acquisition loan immediately upon endorsement of the note.

(b) *Term of Commitment.* (1) A firm commitment is effective for whatever term is specified in the text of the commitment.

(2) The term of a firm commitment may be extended in such manner as the Commissioner may prescribe.

(c) *Reopening of expired commitments.* An expired firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

Date: March 22, 1996.

Nicolas P. Retsinas,

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