DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 201

[Docket No. FR–3718–I–01]

RIN 2502–AG32

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Title I Property Improvement and Manufactured Home Loan Insurance Programs

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

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations implementing its property improvement and manufactured home loan insurance programs under title I, section 2 of the National Housing Act. This interim rule amends the regulations to codify program changes that were previously effectuated by waiving various requirements of the regulations, under the Secretary's general waiver authority. The interim rule also makes other changes that are needed to clarify program requirements, to enable the Department to better use the Title I programs in accomplishing its mission, and to eliminate unnecessary regulations.

DATES: Effective date: June 3, 1996.

Comments due date: July 1, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, 490 L'Enfant Plaza East, Suite 3214, Washington, DC 20024, telephone (202) 755–7400. This number is not toll-free. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Requirements

The information collection requirements in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3520) and were assigned OMB control number 2502–0328. 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.

Introduction

Under title I, section 2 of the National Housing Act (12 U.S.C. 1703), the Department insures approved lenders against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations implementing the Title I programs are in 24 CFR part 201.

This interim rule amends part 201 to codify program changes that were previously effectuated by waiving various requirements of the regulations, under the Secretary's general waiver authority in § 201.5(a). The Department informed all approved Title I lenders of these changes in three Title I Letters: TI–428, issued July 22, 1994; TI–429, issued October 6, 1994; and TI–431, issued June 5, 1995.

These program changes were the result of an outreach process in which the Department received recommendations from a wide variety of program participants, including lenders, State and local government agencies, nonprofit organizations, manufactured home retailers and producers, insurance companies, trade associations, and owners of manufactured homes. They reflect a significant redirection of the Title I programs to serve community development needs, with a focus on assisting low- and moderate-income families in making needed repairs to their homes, supporting revitalization and rebuilding efforts in central cities, upgrading housing in rural areas and other underserved credit areas, and enabling first-time homebuyers to purchase affordable housing.

The waivers announced in TI–428, TI–429, and TI–431 were limited in duration until the Department could make the necessary changes in the regulations. Accordingly, as of the effective date of this interim rule, those waivers are no longer operative.

This interim rule also amends part 201 to make other changes necessary to clarify program requirements, to enable the Department to better utilize the Title I programs in accomplishing its mission, and to eliminate unnecessary regulations. Each of the program changes is discussed in the sections that follow.

Changes Affecting Both Title I Loan Programs

Changes in the Title I regulations that apply to both property improvement and manufactured home loans include the following: clarifying dealer approval requirements; limiting discount points paid by borrowers; prohibiting discount points from being collected from dealers; prohibiting penalties for loan prepayment; permitting financial assistance in meeting the borrower's initial payment; providing that eligible fees and charges will be established by the Secretary, but removing the specific fees and charges from the regulations; revising flood insurance requirements; and eliminating the annual adjustment in the lender's insurance reserves.

Dealer Approval Requirements

Section 201.27(a)(2) requires that the dealer's financial statement be prepared by a licensed public accountant. This licensing requirement was waived in TI–428, because the Department determined that it imposed a burden on small dealers, particularly in the property improvement loan program. In place of the licensing requirement, the Department stated that it expected the lender to take into consideration whether the financial statement was prepared by someone who is independent of the dealer and is qualified by education and experience to prepare such statements.

Accordingly, this interim rule amends § 201.27(a)(2) by eliminating the requirement that the financial statement be prepared by a licensed public accountant and substituting the phrase ''someone who is independent of the dealer and is qualified by education and experience to prepare such statements.''

Payment of Discount Points by Borrowers

Section 201.13 states that the lender and the borrower may negotiate the amount of any discount points to be paid by the borrower as part of the borrower's initial payment. As used in the Title I regulations, the Department intends the term ''discount points'' to have the same meaning it has throughout the banking, finance, and investment communities—that is, an up front fee charged by the lender, separate from interest but part of the total finance charge, that is to increase the lender's yield on the loan to a competitive

position with other types of investments.

In recent years, property improvement lenders in certain areas of the country have been charging high up-front fees to borrowers and calling them ''discount points,'' although they seem to have no relationship to the lender's overall yield on the loan. Rather, they are being used to cover the lender's costs in originating the loan and marketing the Title I program. The Department's Monitoring Division has found evidence that these ''discount points'' are often financed from the loan proceeds, in contravention of the program regulations. The result is that many low- and moderate-income borrowers, who are otherwise creditworthy and need Title I loans, cannot obtain them because of the high discount points.

In TI–431, the Department announced that the continued practice of borrowers' being charged high levels of ''discount points'' when there was no benefit to the borrower in the form of a lower interest rate was no longer acceptable. TI–431 stated that the collection of discount points from the borrower was no longer permitted, unless the lender could demonstrate a clear relationship between the charging of discount points and some tangible benefit to the borrower such as a compensating decrease in the interest rate being charged.

To clarify the Department's intent, this interim rule amends § 201.2 to define ''discount points'' as ''a fee charged by the lender, separate from interest but part of the lender's total yield on the loan needed to maintain a competitive position with other types of investments. One discount point equals one percent of the principal amount of the loan. As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent relationship.''

Payment of Discount Points by Dealers

Section 201.13 states that the lender and the dealer may negotiate the amount of any discount points to be paid by the dealer for the benefit of the borrower. The purpose of this provision, which was added to the regulations in 1986, was to enable the dealer to assist the borrower by paying some of the up-front costs of obtaining a Title I loan, or by buying down the interest rate so that the borrower could qualify for the loan. Some lenders have abused this provision, charging ''discount points'' to dealers for the acceptance of borrowers with marginal credit, and inflating the cost of home improvements to the detriment of low- and moderate-income borrowers.

In TI–428, the Department clarified that certain financeable fees and charges incurred by the lender could be paid by the dealer. TI–428 stated that the dealer could advance the funds for these items and could be reimbursed by the lender from the loan proceeds. Alternatively, the lender could advance the funds for these items and then deduct their cost from the loan proceeds paid to the dealer. In either case, TI–428 made clear that there must be full disclosure that these items had been added to the price of the goods and/or services being provided by the dealer.

The Department informed lenders that, with this clarification on the fees and charges that may be paid by dealers, the collection of discount points from dealers was no longer necessary. The Department urged lenders to discontinue the practice of collecting discount points from dealers when those points were unrelated to the financeable fees and charges. The Department advised lenders that, if they failed to comply with this request voluntarily, the Department would amend the regulations to prohibit any collection of discount points from dealers.

Since TI–428 was issued on July 22, 1994, the Department's Monitoring Division has found that many lenders have continued the practice of collecting ''discount points'' that are not for the benefit of the borrower and bear no relation to the payment of fees and charges that may be paid by the dealer. Therefore, this interim rule amends § 201.13 to prohibit the payment of discount points by any party other than the borrower. Conforming amendments are also made to § 201.26(a)(5)(ii), (b)(3)(vii), (b)(4)(vii), and (b)(4)(viii).

Loan Prepayment Without Penalty

Section 201.17 requires that the loan note contain a provision permitting full or partial prepayment of the loan.

That section previously contained a requirement that when a loan was prepaid in full, the lender must rebate all unearned interest on the loan, except for a minimum retained handling charge if permitted by State or local law. The Department had intended this requirement to preclude lenders from exacting a prepayment penalty.

The Department removed this requirement in a final rule published in the Federal Register on October 18, 1991 (56 FR 52414, 52430). As stated in the preamble to the October 18, 1991 final rule, the Department determined that, since interest on all loans with applications approved on or after January 15, 1986 must be calculated according to the actuarial method, there should be no unearned interest, and therefore the requirement was unnecessary. However, in amending § 201.17, the Department inadvertently failed to include the replacement language to prohibit lenders from charging a prepayment penalty on loans made since January 1986.

Some lenders have taken advantage of this oversight to assess penalties of as much as six months' advance interest on loans that are prepaid within the first five years of the loan term. Assessing a high prepayment penalty prevents many borrowers from refinancing their loans to take advantage of lower interest rates, even when this may be to their benefit. Prepayment penalties are particularly troublesome in the case of low- and moderate-income borrowers who do not have the cash reserves to pay the penalty.

Accordingly, this interim rule restores the requirement in § 201.17 that full or partial prepayment of the loan must be without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

Financial Assistance on the Initial Payment

Section 201.23(a) provides that, if any part of the borrower's initial payment is loaned to the borrower, that loan must be secured by property or collateral owned by the borrower independently of the property securing the Title I loan. The Department has had several cases in which financial assistance was available from a governmental agency or nonprofit organization to help low- and moderate-income borrowers meet the up-front costs of obtaining a property improvement or manufactured home loan. This assistance was in the form of a loan requiring that the borrower provide a ''soft second'' lien on the property, so that the loan might be repaid at the time the property is sold. In these situations, the Department needs greater flexibility to allow for exceptions to the requirement that the loan be secured by a different property.

Accordingly, this interim rule amends § 201.23(a) to provide that if any part of the borrower's initial payment is loaned to the borrower, that loan must be secured by property or collateral owned by the borrower independently of the property securing the Title I loan, unless the Secretary's prior approval is obtained for an exception to this requirement.

Eligible Fees and Charges

Section 201.25(a) establishes maximum origination fees that may be charged in connection with any new or refinanced Title I loan. Section 201.25(b) lists those fees and charges that may be financed in a property improvement or manufactured home loan, as long as their inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. Section 201.25(c) lists fees and charges that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, manufacturer, or any other party to the loan transaction.

In TI–429 and TI–431, the Department waived § 201.25(a) and (c)(1) to increase the maximum origination fee for any new property improvement loan and to permit this fee to be financed. In TI–428, the Department waived § 201.25(c) (3) and (4) to permit recording fees, recording taxes, filing fees, and documentary stamp taxes to be financed for both property improvement and manufactured home loans. In that letter, the Department also waived § 201.25(c)(8) to permit appraisal fees in connection with the purchase or refinancing of a manufactured home and/or lot to be financed.

However, as a result of the Department's page-by-page review of its regulations, it has determined that the inclusion of detailed lists of eligible fees and charges in the program regulations is unnecessary. Changes to the list of eligible fees and charges are sometimes needed, and program participants would benefit greatly if these changes could be made in a more timely manner than through the rulemaking process.

Accordingly, this interim rule amends § 201.25 (a) and (b) to provide that the Secretary will establish a list of fees and charges that may be included in property improvement loans and manufactured home loans, respectively, provided that they are incurred in originating the loan and their inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. The interim rule also amends § 201.25(c) to provide that the Secretary will establish a list of fees and charges incurred by the lender that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, or any other party to the loan transaction.

Concurrently with the publication of this interim rule, the Department will issue a Title I Letter that identifies the specific fees and charges that may be financed in a property improvement or manufactured home loan, as well as the fees and charges that may be collected from the borrower but may not be financed in the loan. The fees and charges that were the subject of waivers in TI–428, TI–429, and TI–431 will be included in the Title I Letter.

Revised Flood Insurance Requirements

Section 201.28(a) requires flood insurance coverage if the property securing a Title I loan is located in a special flood hazard area as identified by the Federal Emergency Management Agency (FEMA). The National Flood Insurance Reform Act of 1994 (Pub. L. 103–325, approved September 23, 1994) amended and expanded the flood insurance requirements of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, approved December 31, 1973). The 1994 Act requires that flood insurance be obtained at any time during the term of the loan that a supervised lender or its servicer determines that the secured property is located in a special flood hazard area identified by FEMA. If the borrower does not obtain flood insurance within 45 days after being notified by the lender or servicer that it is required, the lender is expected to force-place the insurance and bill the borrower for the premiums.

It has been a longstanding policy of the Department that all secured Title I loans are subject to Federal flood insurance requirements. The Department expects all lenders, whether supervised or nonsupervised, to comply fully with the requirements of the 1994 Act. Accordingly, this interim rule amends § 201.28(a) to reflect the new statutory requirements and make them applicable to all Title I lenders.

Lenders may make their own flood hazard area determinations, or they may use outside firms that specialize in providing this information. If an outside firm is used, the fee for obtaining the flood hazard area determination, including the cost of life-of-the-loan determinations, may be included in the loan amount, as long as the maximum loan amounts in § 201.10 are not exceeded. Permitting these fees to be financed is a change from previous Departmental policy. The Title I Letter on fees and charges that is to be issued concurrently with the publication of this interim rule includes this policy change.

Annual Adjustment in Insurance Reserves

Section 201.32(b) requires that a 10 percent annual reduction be applied to each lender's insurance coverage reserve account after the lender has had a Title I contract of insurance for more than five years. In TI–431, the Department announced that it would no longer apply an annual adjustment to any lender's insurance reserves, beginning on October 1, 1995. The Department concluded that the annual reduction no longer serves the purpose of protecting the Federal Housing Administration (FHA) insurance fund against excessive claim losses caused by lenders that exhaust their insurance reserves. Rather, it has penalized lenders who built their loan volume methodically over a period of years and those who maintained low claim rates.

The Department instituted the annual adjustment of insurance reserves in the early 1950s, when the Department was extending the Title I program for a time period that exceeded the maximum allowable term of the loans being made. In that lending climate, all lenders held loans in their own portfolios. The Department's concern was that lenders might accumulate reserves that were excessive in relation to the loans remaining in the lenders' portfolios.

In today's lending environment, the annual adjustment has become an anachronism. Many lenders that originate Title I loans sell them to servicing lenders; the servicing lenders then sell them to investing lenders that issue securities backed by the loans for sale to investors. With the movement of loans from lender to lender, the annual adjustment is no longer meaningful or effective in protecting the program against excessive claim losses. Instead, it has been restricting the growth of the Title I program, creating uncertainty about the lender's future insurance coverage, and preventing the active participation of larger, better capitalized lenders in the program.

Accordingly, this interim rule amends § 201.32 by removing paragraph (b). In addition, the interim rule makes conforming amendments to §§ 201.1 and 201.32(a) to remove references to the annual adjustment in insurance reserves.

Changes Affecting Property Improvement Loans

Changes to the Title I regulations that are applicable only to property improvement loans include the following: eliminating the equity requirement for loans over $15,000, increasing the maximum origination fee and the maximum amount of an unsecured loan, permitting greater use of the program to improve manufactured homes, removing impediments to greater use of the program for improving

multifamily structures, eliminating the completion certificate requirement under certain circumstances, and revising procedures to assist victims of major disasters.

Elimination of the Equity Requirement

Sections 201.20(a)(3) and 201.26(a)(1) of the regulations require that the borrower have equity in the property at least equal to the loan amount on any property improvement loan (or combination of such loans) exceeding $15,000. In TI–428, the Department partially waived this equity requirement, so that it no longer applied when the property to be improved was occupied by the borrower.

The equity requirement was intended to provide more secure collateral for larger property improvement loans. However, after three years of experience with the requirement, the Department concluded that it was costly and time-consuming, with no significant risk protection for either the lenders or the Department. In the event of default, it was usually not cost-effective for the lender to foreclose on the property, because the costs of carrying the first mortgage, disposing of the property, and maintaining it prior to sale would consume whatever equity there might be. The equity requirement was preventing the people that Title I was created to serve (creditworthy borrowers with limited equity) from obtaining loans to carry out needed improvements.

The waiver granted by TI–428 has benefited many creditworthy borrowers, but only when the property was owner-occupied. The Department is concerned that the equity requirement is preventing the property improvement loan program from being used in the revitalization of central cities, where much of the housing stock consists of small multifamily buildings (e.g., two to ten units). Title I loans are usually not available for these multifamily buildings because the owner does not live on-site and does not have enough equity to qualify for a loan.

Accordingly, this interim rule eliminates the equity requirement in its entirety by removing §§ 201.20(a)(3) and 201.26(a)(1)(iii). In addition, with the publication of this interim rule and upon its effective date, the Department is withdrawing the Federal Register notice published on January 8, 1992 (57 FR 610) that established the procedures for determining the market value of the property and evaluating whether the borrower had sufficient equity.

Increased Maximum Origination Fee

Section 201.25(a) limits the maximum origination fee that may be paid by the borrower to one percent of the loan amount on any new Title I loan, and to one percent of the additional advance on any existing Title I loan being refinanced by the lender. Section 201.25(c)(1) specifies that this origination fee may not be financed in the loan.

In TI–429, the Department waived these two limitations to permit the financing of an origination fee of up to three percent of the loan amount. However, this waiver was only for single family property improvement loans made to low- and moderate-income borrowers in connection with a housing assistance program administered by a State or local government agency or a nonprofit organization. The waiver was intended to serve as an inducement for the creation of public-private partnerships and to reduce the out-of-pocket expenses for low- and moderate-income borrowers.

In TI–431, the Department extended the waiver of the one percent limitation on the origination fee to all property improvement loans, and a maximum origination fee of five percent of the loan amount is now permitted on all new property improvement loans. In addition, the Department waived the prohibition against financing this origination fee, as long as the maximum loan amounts in § 201.10 are not exceeded. The Department recognized that a one percent origination fee was simply not enough to cover the lenders' costs in originating these loans, when the origination fee on the average property improvement loan of $13,000 is limited to $130. These waivers allow property improvement lenders to charge a more reasonable origination fee, while at the same time reducing the out-of-pocket expenses of borrowers obtaining Title I loans.

As discussed above, the Department is amending § 201.25(a), (b), and (c) to provide that the Secretary will establish eligible fees and charges. However, the Department is removing the specific fees and charges from the regulations. In a Title I Letter to be issued concurrently with the publication of this interim rule, the Department is revising the list of fees and charges that may be financed to permit the lender to charge a maximum origination fee of five percent of the loan amount on any new property improvement loan, as long as the fee has been incurred and its inclusion does not increase the total principal obligation beyond the maximum loan amounts in § 201.10. The maximum origination fee for a new manufactured home loan remains at one percent of the loan amount and cannot be financed.

In a related change, the Department is revising the list of nonfinanceable fees and charges to permit the lender to assess a handling charge of up to one percent of the new loan amount for refinancing an existing Title I loan. This change will enable lenders to charge a more reasonable fee for the work involved in processing a loan refinancing, and it is included in the Title I Letter that is to be issued concurrently with the publication of this interim rule.

Maximum Amount for Unsecured Loans

Section 201.24(a) limits the maximum amount of an unsecured property improvement loan to $5,000. In TI–428, the Department waived this limitation to allow lenders to make unsecured property improvement loans up to $7,500. This increase in the unsecured loan amount makes it possible for lenders to finance small home improvement projects without obtaining and recording a security interest in the property being improved. It also sets the threshold for obtaining a security interest at the same dollar amount required for on-site inspections of property improvements. Accordingly, this interim rule amends § 201.24(a) by substituting "$7,500" for "$5,000."

Manufactured Home Improvement Loans

Under the definition of "manufactured home improvement loan" in § 201.2, the loan proceeds may be used only to improve the manufactured home, but cannot be used for site improvements. In TI–428, the Department waived this restriction to permit the proceeds of a manufactured home improvement loan to be used for site improvements, as long as the borrower is the owner of the underlying real estate. Accordingly, this interim rule amends § 201.2 to permit the proceeds of a manufactured home improvement loan to be used for site improvements if the borrower is the owner of the underlying real estate.

In a related change, the interim rule also amends § 201.10(a)(1)(iv) to increase the maximum loan amount for a manufactured home improvement loan from $5,000 to $7,500. This increase is needed to keep pace with the increased cost of home improvements, as measured by the change in the Home Maintenance and Repair component of the Consumer Price Index since the $5,000 limit was established in 1980. Between 1980 and 1994, the Home

Maintenance and Repair component increased by 59 percent. Thus, a 50 percent increase in the maximum loan amount is warranted.

Ownership of Multifamily Properties

The definition of ''multifamily property improvement loan'' in § 201.2 provides that the multifamily structure may not be owned by a corporation, partnership, or trust. As noted above, the Department is interested in expanding the use of Title I property improvement loans to rehabilitate small multifamily structures in central cities. The Department has occasionally waived this restriction on ownership to permit multifamily property improvement loans to be made to nonprofit corporations or partnerships that own and operate housing primarily for low- and moderate-income families.

To give the Department greater flexibility in approving these types of nonprofit entities as Title I borrowers and to eliminate the delays inherent in the waiver process, this interim rule amends § 201.2 to allow for exceptions to the prohibition against corporations, partnerships, and trusts with the prior approval of the Secretary.

Approval for Loan Amounts Over $25,000

Section 201.10(a)(2) requires the prior approval of the Secretary for any property improvement loan that will result in the borrower having a total unpaid principal obligation in excess of $25,000, whether in one Title I loan or several loans. The Department has determined that, because of staff reductions and the restructuring of its field offices, the continued imposition of this requirement will only serve to delay loan originations.

In addition, it is an impediment to the use of multifamily property improvement loans to rehabilitate small multifamily structures in central cities. Accordingly, this interim rule amends § 201.10 by removing paragraph (a)(2).

Completion Certificate Requirements

Section 201.40(b) of the regulations requires that a borrower obtaining a direct property improvement loan must submit a completion certificate to the lender after completion of the work, but not later than 6 months after disbursement of the loan proceeds. In TI–429, the Department waived the requirement for submitting a completion certificate for situations in which the borrower applies for a property improvement loan through a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, based upon the percentage of work completed. The Department determined that, under these conditions, the controlled disbursement of the loan funds with the borrower's approval obviates the need for obtaining a completion certificate.

Accordingly, this interim rule amends § 201.40 by adding a new paragraph (b)(3) to exempt the borrower from submitting a completion certificate when the property improvement loan is made by or on behalf of a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, with the written approval of the borrower and based upon the percentage of work completed.

Assistance to Disaster Victims

Section 201.20(b)(3) provides that the proceeds of a property improvement loan may be used only for improvements that are started after loan approval. The Department has waived this limitation in connection with Presidentially-declared disasters such as the Northridge, California earthquake and Hurricanes Marilyn and Opal. In addition, the Department has waived this limitation in individual cases when the borrower needed to begin emergency repairs prior to loan approval.

The Department has concluded that greater use would be made of the Title I program to assist disaster victims in repairing their homes if the regulations provided for an exception to § 201.20(b)(3) whenever there is a major disaster declared by the President. In addition, the Department's ability to address other emergency situations would be enhanced if greater flexibility were available to grant exceptions to this limitation on starting the improvements.

Accordingly, this interim rule amends § 201.20(b)(3) to provide that the loan proceeds shall only be used to finance property improvements that are started after loan approval, unless (a) the prior approval of the Secretary is obtained for an exception, or (b) the property is located in a major disaster area declared as such by the President, and the lender determines that emergency action is needed to repair damage resulting from the disaster.

The interim rule also amends § 201.54(b)(2) to permit the Secretary to extend the claim filing period on a property improvement loan when the borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance.

Changes Affecting Manufactured Home Loans

Changes in the Title I regulations that are applicable only to manufactured home loans include the following: reducing the minimum required downpayment and revising the maximum loan amount to compensate for the lower downpayment, increasing the maximum expense-to-income ratios for borrowers purchasing energy-efficient manufactured homes, and increasing the maximum dollar allowances for repossession expenses and legal fees.

Reduced Downpayment Requirements

Section 201.23 of the regulations requires a minimum cash downpayment of five percent of the first $5,000 and ten percent of the balance of the purchase price to obtain a new manufactured home or a manufactured home and lot. To purchase an existing manufactured home or a developed lot on which to place a manufactured home, the minimum downpayment is ten percent of the purchase price.

In TI–428, the Department waived the present downpayment requirements to require a minimum cash downpayment of five percent of the purchase price for all manufactured home purchase loans, manufactured home lot loans, and combination loans. The Department decided that a five percent minimum downpayment would help restore Title I as a financing vehicle for first-time buyers to achieve affordable homeownership. It would create a different loan program from conventional financing and would enable lenders and dealers to offer low- and moderate-income families a real alternative.

Accordingly, this interim rule amends § 201.23(b), (c), and (d) by replacing the existing downpayment requirements in these sections with ''five percent of the purchase price.''

Changes in Maximum Loan Calculation

Because of the reduction in the minimum downpayment to five percent, TI–428 also granted waivers that apply to the maximum loan amount calculations in § 201.10(b), (c), and (d). The maximum loan amount for the purchase of a new manufactured home under § 201.10(b)(1) or for the purchase of a new manufactured home and lot under § 201.10(d)(1) was based upon 125 percent of the wholesale (base)

price of the home, itemized options, and freight charge. The Department increased the percentage to 130 percent to conform with the reduced downpayment requirement.

In a related change, the Department also waived the maximum dollar allowances applicable to delivery and set-up of the home in § 201.10(b)(1) and (d)(1), and to skirting in § 201.10(b)(1). These waivers ensure that the downpayment is a true 5 percent in most cases, and give lenders and dealers greater flexibility in dealing with State and local variations in installation standards.

For the purchase of an existing manufactured home under § 201.10(b)(2) or a manufactured home lot under § 201.10(c), the maximum loan amount was calculated at 90 percent of the appraised value or purchase price, whichever was less. To conform with the reduced downpayment requirement, the Department increased the percentage to 95 percent.

Accordingly, this interim rule amends § 201.10(b), (c), and (d) in the following respects:

1. By replacing ''125 percent'' with ''130 percent'' in § 201.10(b)(1)(i) and (d)(1)(i);
2. By removing ''not to exceed $750 per module'' in § 201.10(b)(1)(iii);
3. By replacing ''Skirting costs, not to exceed $500'' with ''The actual dealer's cost of skirting'' in § 201.10(b)(1)(iv);
4. By replacing ''90 percent'' with ''95 percent'' in § 201.10(b)(2) and (c); and
5. By removing ''not to exceed $1,200 per module'' in § 201.10(d)(1)(iii).

Increase in Expense-to-Income Ratios

Section 201.22(b) states that, for any Title I loan, the borrower's income must be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. On October 18, 1991 (56 FR 52438), the Department published a notice in the Federal Register setting the maximum expense-to-income ratios for manufactured home loans at 29 percent for total housing expenses and 41 percent for total fixed expenses.

In TI–428, the Department waived the 29 percent and 41 percent ratios in favor of higher ratios of 31 percent and 43 percent, respectively, for borrowers who purchased manufactured homes with a date of manufacture on or after October 25, 1994, the effective date of the Department's new energy conservation standards. The Department adopted the higher ratios to recognize that while energy-efficient homes are more expensive, borrowers will be spending less of their income on fuel costs.

Since the Department has already notified lenders of this change in the maximum expense-to-income ratios by Title I Letter, this interim rule amends § 201.22(b)(1) to eliminate the need for publication of a Federal Register notice to advise lenders of the change. The Department has decided that lenders can be more effectively notified of future changes in maximum expense-to-income ratios through Title I Letters or by including the information in program handbooks.

Repossession Expenses and Legal Fees

Section 201.55(b)(3) sets the maximum dollar allowances for removal and transportation of a repossessed manufactured home to an off-site location at $750 per module. In TI–428, the Department waived this limit to permit an increase in the allowance to $1,000 per module, which more accurately reflects the lender's cost for this activity. Accordingly, this interim rule amends § 201.55(b)(3) by substituting ''$1,000'' for ''$750.''

Section 201.55(b)(7) sets the maximum dollar allowance for attorney's fees in connection with a claim on a manufactured home loan at $500. In TI–428, the Department waived this limit to permit an increase in the allowance to $1,000, which more accurately reflects the cost for legal services. Accordingly, this interim rule amends § 201.55(b)(7) by substituting ''$1,000'' for ''$500.''

Clarifying and Conforming Amendments

The Department is also amending other sections of part 201 to clarify the regulations and conform them with current practice in the operation of the Title I program. The Department calls particular attention to the following amendments:

1. In § 201.2, the Department is revising the definition of ''existing structure'' to clarify that the 90-day completion and occupancy requirement applies to all manufactured homes, whether they are real or personal property. In a conforming change, the Department is revising § 201.20(b)(1) to remove redundant language on the 90-day completion and occupancy requirement.

2. In § 201.2, the Department is revising the definition of ''manufactured home'' to clarify that the construction standards for existing manufactured homes apply only to loans for the purchase or refinancing of such homes, and not to property improvement loans on manufactured homes.

3. In § 201.2, the Department is revising the definition of ''State'' to substitute ''the Commonwealth of the Northern Mariana Islands'' for ''the Trust Territory of the Pacific Islands,'' since the remainder of the Trust Territory is now independent and is no longer eligible to participate in the Title I programs.

4. In § 201.3, the Department is removing paragraph (b), which indicates the applicability of amendments made to part 201 by a final rule that was published in the Federal Register on October 18, 1991 (56 FR 52414). The paragraph is now obsolete because many of the regulatory sections listed in the paragraph have been eliminated or changed. To the extent that it is still applicable, the preamble to the final rule contains the same information.

5. The Department is revising § 201.10(b)(3) and (d)(3) to clarify that the ''purchase price'' used in connection with manufactured home purchase loans and combination loans includes the retail cost to the borrower of all items set forth in the purchase contract, not just those items that are eligible for inclusion in the Title I loan.

6. The Department is revising §§ 201.10(f)(3) and 201.11(c)(2) to clarify that these provisions apply to the refinancing of any uninsured manufactured home loan, and are not limited to manufactured home purchase loans and combination loans.

7. The Department is revising §§ 201.10(f)(4) and 201.11(c)(3) to clarify that these provisions apply anytime the borrower is refinancing a manufactured home lot already owned by the borrower in connection with the purchase of a manufactured home.

8. The Department is revising §§ 201.10(f)(5) and 201.11(c)(4) to clarify that these provisions apply anytime the borrower is refinancing a manufactured home already owned by the borrower in connection with the purchase of a manufactured home lot. The Department is also increasing the maximum loan amount in § 201.10(f)(5) to $64,800, in conformance with a final rule published in the Federal Register on July 30, 1993 (58 FR 40996).

9. The Department is revising § 201.11 to add a new paragraph (a)(3), limiting the maximum term for an historic preservation loan to 15 years and 32 days. The Department inadvertently omitted this provision when it changed the maximum term for other types of property improvement loans in a final rule published in the Federal Register on September 30, 1992 (57 FR 45244).

10. The Department is revising § 201.12, which sets forth requirements for the note, to remove a prohibition against the use of discount or add-on notes in connection with any Title I loan approved on or after January 15, 1986. Although such loans remain uninsurable, the Department believes that it is no longer necessary to spell out this prohibition, since the Department is revising § 201.13 as described in paragraph 10, below.

11. The Department is revising § 201.13 to state that interest on a Title I loan shall be ''calculated on a simple interest basis,'' rather than ''calculated according to the actuarial method.''

12. The Department is revising § 201.20(a)(2) to specify that the manufactured home must be the principal residence of the borrower to be eligible for a manufactured home improvement loan. In a conforming change, this interim rule removes the same provision from § 201.20(b)(1), since that section deals with the use of the loan proceeds.

13. The Department is further revising § 201.20(b)(1) to include provisions previously found in § 201.26(a)(2). As revised, § 201.20(b)(1) requires that, if the borrower plans to use a dealer or contractor to carry out the property improvements, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. Alternatively, if the borrower plans to carry out the work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost. In a conforming change, the Department is revising § 201.26(a)(2) to remove the present language and to refer to the requirements of § 201.20(b)(1).

14. The Department is revising §§ 201.20(b)(2) and 201.21(b)(5) to eliminate the need for publication of a Federal Register notice to notify lenders about items and activities that are ineligible for financing in property improvement or manufactured home loans. The Department has decided that lenders are more effectively notified of this information through Title I Letters or by including the information in program handbooks.

15. The Department is revising § 201.21(b)(3) to specify that wheels and axles cannot be purchased with the proceeds of a manufactured home loan, and to clarify that the cost of furniture, wheels, and axles shall not be included in the maximum loan amount calculated under § 201.10(b)(1) or (d)(1). The Department inadvertently omitted the reference to wheels and axles from this section when it implemented the prohibition against financing these items in a final rule published in the Federal Register on October 18, 1991 (56 FR 52414).

16. In § 201.22(b)(2), the Department is revising the definition of ''other recurring charges'' to remove child care expenses as an item that must be considered in determining whether the borrower's income is adequate to qualify for a property improvement or manufactured home loan. This change is consistent with modifications in credit underwriting requirements that have taken place in the Department's other loan and mortgage insurance programs.

17. The Department is revising § 201.22(c)(1) to clarify the prohibition against a lender approving a Title I loan if the borrower is in default on a previous loan obligation owed to or insured or guaranteed by the Federal Government.

18. The Department is revising § 201.24(a)(1) to clarify that the requirement that the Title I loan must have lien priority over any uninsured loan made by the lender at the same time does not apply when the uninsured loan is a first mortgage loan for the purchase or refinancing of the property.

19. The Department is revising § 201.25(d) to clarify that neither the lender nor the borrower may pay a referral fee to any third party in connection with the origination of a Title I loan. Prohibiting the borrower from paying a referral fee is consistent with the wording in the preambles to both the proposed rule published in the Federal Register on January 29, 1991 (56 FR 3302) and the final rule published in the Federal Register on October 18, 1991 (56 FR 52414), but the Department inadvertently omitted this prohibition from the text of the regulation.

20. The Department is revising § 201.26(b)(6) to clarify that an inspection by the lender or its agent on a direct manufactured home loan is required only when the transaction involves the relocation of the manufactured home to a new homesite.

21. The Department is revising § 201.27(a)(5) to clarify that the lender is required to notify the Department that it has terminated its approval of a dealer only if the termination was because the dealer did not satisfactorily perform its contractual obligations to borrowers, did not comply with Title I requirements, or was unresponsive to the lender's supervision and monitoring requirements.

22. The Department is removing § 201.27(b)(2), which provided for limited recourse agreements between manufactured home lenders and dealers for uninsurable loans, because it is obsolete.

23. In § 201.32(a)(1), the Department is eliminating the requirement that separate Title I contracts of insurance and separate reserve accounts be established for lenders that originate, purchase, or hold both property improvement and manufactured home loans. The Department has determined that requiring two contracts of insurance poses an unnecessary obstacle to more widespread lender participation in the Title I program.

24. The Department is revising § 201.52 to clarify that when a lender accepts a voluntary conveyance of title or a voluntary surrender of the property securing a manufactured home loan, it is not necessary to send the borrower the notice of default and acceleration that is otherwise required by § 201.50(b).

25. The Department is revising § 201.53 to clarify that in determining the best price obtainable for a manufactured home property, cost items other than repairs may be deducted from the actual sales price, so that a valid comparison can be made with the appraised value of the property before repairs.

Justification for Interim Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

Many of the changes in this interim rule merely codify the Secretary's waiver of burdensome regulatory requirements. As noted earlier, the Department developed many of these changes through an outreach process that involved a wide variety of program participants, and the Department notified all approved lenders of the changes through Title I Letters. The Department considered the alternatives and determined that these changes are generally compatible with industry practice and are necessary to increase the availability of credit to qualified borrowers and to further the goals of the National Housing Act. Greater use of the Title I program will help preserve the nation's existing housing stock and rebuild neighborhoods.

Furthermore, implementation of the interim rule's provisions is needed as soon as possible to eliminate the practice of lenders collecting discount

points from dealers that are not for the benefit of borrowers, and to stop the continued assessment of excessive prepayment penalties that are preventing low- and moderate-income borrowers from refinancing their loans. Therefore, the Department has determined that good cause exists to omit prior public procedure for this interim rule because such delay would be contrary to the public interest and unnecessary.

However, the Department is interested in obtaining as much public input as possible as to how this interim rule could be further improved or streamlined. The Department is allowing for a 60-day public comment period, after which it will consider the issues raised by the commenters in its development of a final rule.

Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of regulatory reinvention, the Department is conducting a page-by-page review of all its regulations to determine whether certain regulations can be eliminated. As part of this review, the Department is publishing this interim rule, which eliminates from the Code of Federal Regulations many of the burdensome substantive requirements in the Title I programs. This interim rule also removes from the regulations the lists of eligible fees and charges under the Title I programs. It is unnecessary and burdensome for these lists to be included in the regulations. The Secretary will instead notify lenders of these fees and charges directly through Title I Letters.

Findings and Other Matters

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with the Department's regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection as provided under the section of this preamble entitled ''Executive Order 12866.''

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that it will not have a significant economic impact on a substantial number of small entities. The majority of institutions that participate in the Title I program are large depository institutions, and nearly all of the changes relieve regulatory burdens for all entities seeking to conduct Title I loan transactions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Specifically, the requirements of this interim rule are directed to lenders and borrowers, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the interim rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family,* has determined that this interim rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. The interim rule involves requirements for property improvement and manufactured home loans insured by the Department. Any effect on the family will likely be indirect and insignificant.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 201 is amended as follows:

PART 201——TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 1436a and 3535(d).

2. Section 201.1 is amended by adding a period after the phrase ''§ 201.2'', and by revising the fourth sentence, to read as follows:

§ 201.1 Purpose.

* * * The insurance can cover up to 10 percent of the amount of all insured Title I loans in the financial institution's portfolio, as reflected in the total amount of insurance coverage contained at any time in an insurance coverage reserve account established by the Secretary, less amounts for insurance claims paid. * * *

3. Section 201.2 is amended by:

a. Removing the paragraph designations (a) through (ll);

b. Adding a new definition of the term ''*Discount points*'' in alphabetical order;

c. Revising the first sentence of the introductory text of the definition of the term ''*Existing structure*'';

d. Revising the second sentence in paragraph (2) of the definition of the term ''*Lender*'';

e. Revising the third sentence of the definition of the term ''*Manufactured home*'';

f. Adding a sentence at the end of the definition of the term ''*Manufactured home improvement loan*''; and

g. Revising the definitions of the terms ''*Multifamily property improvement loan*'' and ''*State*'', to read as follows:

§ 201.2 Definitions.

* * * * *

Discount points means a fee charged by the lender, separate from interest but part of the total finance charges on the loan, that is part of the lender's total yield on the loan needed to maintain a competitive position with other types of

investments. One discount point equals one percent of the principal amount of the loan. As discount points on the loan increase, the interest rate can be expected to decrease in a fairly consistent relationship.

Existing structure means a dwelling, including a manufactured home, that was completed and occupied at least 90 days prior to an application for a Title I loan, or a nonresidential structure that was a completed building with a distinctive functional use prior to an application for a Title I loan. * * *

* * * * *

Lender * * *

(2) For purposes of loan origination under subparts A, B, and C of this part, the term ''lender'' also includes a ''loan correspondent'' as defined in this section.

* * * * *

Manufactured home * * * To qualify for a manufactured home loan insured under this part, an existing manufactured home must have been constructed in accordance with standards published at 24 CFR part 3280 and must meet standards similar to the minimum property standards applicable to existing homes insured under title II of the Act, as prescribed by the Secretary.

Manufactured home improvement loan * * * The proceeds of a manufactured home improvement loan may also be used for improvements to the homesite, as long as the borrower is the owner of the home and the underlying real estate.

* * * * *

Multifamily property improvement loan means a loan to finance the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families. The multifamily structure may not be owned by a corporation, partnership, or trust, unless the prior approval of the Secretary is obtained for an exception to this requirement.

* * * * *

State means any State of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

* * * * *

4. Section 201.3 is revised to read as follows:

§ 201.3 Applicability of the regulations.

The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan that has been made or for which a loan application has been approved before the effective date of the amendment.

5. Section 201.10 is amended by:

a. Revising paragraph (a)(1)(iv);

b. Removing paragraph (a)(2);

c. Redesignating paragraph (a)(3) as paragraph (a)(2); and

d. Revising paragraphs (b)(1)(i), (b)(1)(iii), (b)(1)(iv), (b)(2)(i), (b)(2)(ii), (b)(3), (c), (d)(1)(i), (d)(1)(iii), (d)(3), (f)(3), (f)(4), and (f)(5), to read as follows:

§ 201.10 Loan amounts.

(a) * * *

(1) * * *

(iv) Manufactured home improvement loans—$7,500.

* * * * *

(b) * * *

(1) * * *

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

* * * * *

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of wheels and axles (if not included in the freight charges);

(iv) The actual dealer's cost of skirting;

* * * * *

(2) * * *

(i) 95 percent of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and 95 percent of any itemized amounts allowed under paragraphs (b)(1)(iii) through (vii) of this section, if incurred; or

(ii) 95 percent of the purchase price of the home.

(3) The purchase price of a manufactured home financed with a manufactured home purchase loan shall include the retail cost to the borrower of all items set forth in the purchase contract, including any applicable charges authorized under § 201.25(b).

(c) *Manufactured home lot loans.* The total principal obligation for a loan to purchase and, if necessary, develop a lot suitable for a manufactured home, including on-site water and utility connections, sanitary facilities, site improvements and landscaping, shall not exceed 95 percent of either the appraised value of the developed lot (as determined by a HUD-approved appraisal) or the total of the purchase price and development costs, whichever is less, up to a maximum of $16,200.

(d) * * *

(1) * * *

(i) 130 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

* * * * *

(iii) The actual dealer's cost of transportation to the homesite, set-up and anchoring, including the rental of wheels and axles (if not included in the freight charge);

* * * * *

(3) The purchase price of a manufactured home and a lot financed with a combination loan shall include the retail cost to the borrower of all items set forth in the purchase contract or contracts, including any applicable charges authorized under § 201.25(b).

* * * * *

(f) * * *

(3) The total principal obligation of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the cost to the borrower of prepaying the existing loan or the appraised value of the property (as determined by a HUD-approved appraisal), whichever is less, up to the maximum loan amount permitted under this section for the particular type of loan.

(4) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the total principal obligation of the combination loan shall be determined in accordance with paragraph (d)(1) or (d)(2) of this section.

(5) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the total principal obligation of the combination loan shall not exceed the lesser of the following amounts, up to a maximum of $64,800:

(i) The cost to the borrower of prepaying any existing loan on the home, plus the purchase price of the lot; or

(ii) The appraised value of the home and lot (as determined by a HUD-approved appraisal).

* * * * *

6. Section 201.11 is amended by revising paragraphs (a)(1) and (a)(2), by adding a new paragraph (a)(3), and by revising paragraphs (c)(2), (c)(3), and (c)(4), to read as follows:

§ 201.11 Loan maturities.

(a) * * *

(1) The maximum term for a single family property improvement loan on a manufactured home that qualifies as real property shall not exceed 15 years and 32 days from the date of the loan;

(2) The maximum term for a manufactured home improvement loan shall not exceed 12 years and 32 days from the date of the loan; and

(3) The maximum term for an historic preservation loan shall not exceed 15 years and 32 days from the date of the loan.

* * * * *

(c) * * *

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(3) When a borrower's existing manufactured home lot is being refinanced in connection with the purchase of a manufactured home, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

(4) When a borrower's existing manufactured home is being refinanced in connection with the purchase of a manufactured home lot, the term of the combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

7. Section 201.12 is revised to read as follows:

§ 201.12 Requirements for the note.

The note shall bear the genuine signature of each borrower and of any co-maker or co-signer, be valid and enforceable against the borrower and any co-maker or co-signer, and be complete and regular on its face. The borrower and any co-maker or co-signer shall execute the note for the full amount of the loan obligation. Although the note may be executed by the borrower on an earlier date, the date of the loan shall be the date that the loan proceeds are disbursed by the lender. Such date shall be entered on the note when disbursement occurs. The note shall separately recite the principal amount and any interest at an agreed annual rate that comprises the borrower's payment obligation. The lender shall assure that the note and all other documents evidencing the loan transaction are in compliance with applicable Federal, State, and local laws. If the note is executed on behalf of a corporation, partnership, or trust by an authorized representative, it shall create a binding obligation on such entity.

8. Section 201.13 is revised to read as follows:

§ 201.13 Interest and discount points.

The interest rate for any loan shall be negotiated and agreed to by the borrower and the lender, and such interest rate shall be fixed for the full term of the loan and recited in the note. Interest on the loan shall accrue from the date of the loan, and shall be calculated on a simple interest basis. The lender and the borrower may negotiate the amount of discount points, if any, to be paid by the borrower as part of the borrower's initial payment. The lender shall not require or allow any party other than the borrower to pay any discount points or other financing charges in connection with the loan transaction.

9. Section 201.17 is revised to read as follows:

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

10. Section 201.20 is amended by revising paragraph (a)(2), by removing paragraph (a)(3), and by revising paragraph (b), to read as follows:

§ 201.20 Property improvement loan eligibility.

(a) * * *

(2) To be eligible for a manufactured home improvement loan, the borrower shall have at least a one-half interest in the manufactured home, and the home must be the principal residence of the borrower.

(b) *Eligible use of the loan proceeds.* (1) The loan proceeds shall be used only for the purposes disclosed in the loan application. If the borrower plans to use a dealer or contractor to carry out the improvement work, the lender shall obtain a copy of a proposal or contract that describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

(2) The loan proceeds shall be used only to finance property improvements that substantially protect or improve the basic livability or utility of the property. The Secretary will establish a list of items and activities that may not be financed with the proceeds of any property improvement loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

(3) The loan proceeds shall only be used to finance property improvements that are started after loan approval, unless:

(i) The prior approval of the Secretary is obtained for an exception to this requirement; or

(ii) The property is located in a major disaster area declared by the President, and the lender determines that emergency action is needed to repair damage resulting from the disaster.

* * * * *

11. Section 201.21 is amended by revising paragraphs (b)(3) and (b)(5), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(b) * * *

(3) The proceeds of a loan to purchase a new manufactured home or a new manufactured home and lot shall not be used to purchase furniture or wheels and axles, and the cost of these items shall not be included in the total principal obligation calculated under § 201.10(b)(1) or (d)(1).

* * * * *

(5) The Secretary will establish a list of items and activities that may not be financed with the proceeds of any manufactured home loan. If a lender has any doubt as to the eligibility of any item or activity, it shall request a specific ruling by the Secretary before making a loan.

* * * * *

12. Section 201.22 is amended by revising paragraphs (b)(1), (b)(2)(iv), and (c)(1), to read as follows:

§ 201.22 Credit requirements for borrowers.

* * * * *

(b) * * *

(1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income established by the Secretary. If these expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's

creditworthiness that support approval of the loan.

(2) * * *

(iv) *Other recurring charges* include all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, and any other debt for which the obligation is expected to continue for six months or more.

(c) * * *

(1) The borrower is past due more than 30 days as to the payment of principal or interest under the original terms of a loan obligation owed to or insured or guaranteed by the Federal Government, unless the debt has since been discharged or satisfied; or

* * * * *

13. Section 201.23 is revised to read as follows:

§ 201.23 Borrower's initial payment.

(a) *General requirement.* The borrower shall be responsible for the payment in cash of any costs that will not be paid, or are not eligible to be paid, from the proceeds of the loan. Such costs payable by the borrower may include any required downpayment, any discount points to be paid by the borrower to the lender, any other fees and charges that may not be financed, and any other costs in excess of the loan amount. No part of such costs payable by the borrower may be loaned, advanced, or paid to or for the benefit of the borrower by the dealer, the manufacturer, or any other party to the loan transaction. If the borrower obtains all or any part of such costs through a gift or a loan from some other source, the borrower must disclose the source of such gift or loan on the credit application. Any such loan must be secured by property or collateral owned by the borrower independently of the property securing repayment of the Title I loan, unless the prior approval of the Secretary is obtained for an exception to this requirement. The lender shall consider any such loan obligation in performing the credit investigation. Documentation of any initial payment shall be retained by the lender in the loan file.

(b) *Manufactured home purchase loans.* In the case of a manufactured home purchase loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the home. The borrower's equity in an existing manufactured home and any movable appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

(c) *Manufactured home lot loans.* In the case of a manufactured home lot loan, the borrower shall make a minimum cash downpayment of at least five percent of the total of the purchase price and development costs for the lot.

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the purchase price of the manufactured home and lot. If the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan, but without any cash payment to the borrower.

14. Section 201.24 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 201.24 Security requirements.

(a) * * *

(1) Any property improvement loan in excess of $7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple. If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust. The lien need not be a first lien on the property; however, the lien securing the Title I loan must have priority over any lien securing an uninsured loan made at the same time and in connection with the same property, unless the uninsured loan is a first mortgage loan for the purchase or refinancing of the property.

(2) Any property improvement loan for $7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all Title I loans on the improved property is more than $7,500.

* * * * *

15. Section 201.25 is revised to read as follows:

§ 201.25 Charges to borrower to obtain loan.

(a) *Fees and charges that may be financed in a property improvement loan.* The Secretary will establish a list of fees and charges that may be included in a property improvement loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(b) *Fees and charges that may be financed in a manufactured home loan.* The Secretary will establish a list of fees and charges that may be included in a manufactured home loan. Such fees and charges shall have been incurred in connection with the origination of the loan, and their inclusion shall not increase the total principal obligation beyond the maximum loan amounts in § 201.10.

(c) *Fees and charges that may not be financed.* The Secretary will establish a list of fees and charges incurred by the lender that may be collected from the borrower in the initial payment, but may not be included in the loan amount or otherwise financed or advanced by the dealer, the manufacturer, or any other party to the loan transaction.

(d) *Fees and charges that may not be paid.* Neither the lender nor the borrower may pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker, or any other party in connection with the origination of a loan insured under this part.

16. Section 201.26 is amended by revising paragraphs (a)(1), (a)(2), (a)(5)(ii), (a)(6)(i), (b)(3)(vi), (b)(3)(vii), (b)(4)(vi), and (b)(4)(vii); by removing paragraph (b)(4)(viii); and by revising paragraph (b)(6) introductory text, to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2); and

(ii) The interest of the borrower in the property is valid, through such title or other evidence as is generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated.

(2) The proposed use of the loan proceeds shall be documented in accordance with the requirements of § 201.20(b)(1).

* * * * *

(5) * * *

(ii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from the dealer as an inducement for the consummation of the transaction.

(6) * * *

(i) States that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

* * * * *

(b) * * *

(3) * * *

(vi) The borrower has paid the remaining unpaid balance on any other manufactured home loan secured by a different property, unless the prior approval of the Secretary is obtained for an exception to this requirement; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

(4) * * *

(vi) Any initial payment required under § 201.23 was made by the borrower, and no part of the initial payment was loaned, advanced, or paid to or for the benefit of the borrower by the manufacturer, dealer, or any other party to the loan transaction; and

(vii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

* * * * *

(6) For any direct manufactured home purchase loan or combination loan involving the relocation of the manufactured home to a new homesite owned or leased by the borrower, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection to verify that:

* * * * *

17. Section 201.27 is amended by revising the second sentence of paragraph (a)(2) and by revising paragraph (a)(5); by removing paragraph (b)(2); and by redesignating paragraph (b)(1) as paragraph (b), to read as follows:

§ 201.27 Requirements for dealer loans.

(a) * * *

(2) * * * The dealer shall furnish a current financial statement prepared by someone who is independent of the dealer and is qualified by education and experience to prepare such statements, together with such other documentation as the lender deems necessary to support its approval of the dealer. * * *

* * * * *

(5) If a dealer does not satisfactorily perform its contractual obligations to borrowers, does not comply with Title I program requirements, or is unresponsive to the lender's supervision and monitoring requirements, the lender shall terminate the dealer's approval and immediately notify the Secretary with written documentation of the facts. A dealer whose approval is terminated under these circumstances shall not be reapproved without prior written approval from the Secretary. The lender may in its discretion terminate the approval of a dealer for other reasons at any time.

* * * * *

18. Section 201.28 is amended by revising paragraph (a) to read as follows:

§ 201.28 Flood and hazard insurance, and Coastal Barriers properties.

(a) *Flood insurance.* No property improvement loan or manufactured home loan shall be eligible for insurance under this part if the property securing repayment of the loan is located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA), unless flood insurance on the property is obtained by the borrower in compliance with section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a). Such insurance shall be obtained at any time during the term of the loan that the lender determines that the secured property is located in a special flood hazard area identified by FEMA, and shall be maintained by the borrower for the remaining term of the loan, or until the lender determines that the property is no longer in a special flood hazard area, or until the property is repossessed or foreclosed upon by the lender. The amount of such insurance shall be at least equal to the unpaid balance of the Title I loan, and the lender shall be named as the loss payee for flood insurance benefits.

* * * * *

19. Section 201.32 is amended by revising paragraph (a); by removing paragraph (b); and by redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively, to read as follows:

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* The Secretary shall establish an insurance coverage reserve account for each lender. The amount of insurance coverage in each reserve account shall equal 10 percent of the amount disbursed, advanced, or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans.

* * * * *

20. Section 201.40 is amended by adding a new paragraph (b)(3) to read as follows:

§ 201.40 Post-disbursement loan requirements.

* * * * *

(b) * * *

(3) The borrower is not required to submit a completion certificate when the property improvement loan is made by or on behalf of a State or local government agency or a nonprofit organization, the loan proceeds are held in an escrow account pending completion of the improvements, and the loan proceeds are disbursed from the escrow account in stages, with the written approval of the borrower and based upon the percentage of work completed.

* * * * *

21. Section 201.52 is amended by adding a sentence at the end, to read as follows:

§ 201.52 Acquisition by voluntary conveyance or surrender.

* * * If the lender accepts a voluntary conveyance of title or a voluntary surrender of the property, the notice of default and acceleration under § 201.50(b) shall not be required.

22. Section 201.53 is amended by:

a. Redesignating the paragraph as introductory text;

b. Revising the third sentence of the newly designated introductory text; and

c. Adding paragraphs (a) and (b), to read as follows:

§ 201.53 Disposition of manufactured home loan property.

* * * The best price obtainable shall be the greater of:

(a) The actual sales price of the property, after deducting the cost of repairs, furnishings, and equipment needed to make the property marketable, and after deducting the cost of transportation, set-up, and anchoring if the manufactured home is moved to a new homesite; or

(b) The appraised value of the property before repairs (as determined by a HUD-approved appraisal obtained in accordance with § 201.51(b)(3)).

23. Section 201.54 is amended by revising paragraph (b)(2), to read as follows:

§ 201.54 Insurance claim procedure.

* * * * *

(b) * * *

(2) The Secretary may extend the claim filing period in a particular case, but only if the lender shows clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by one of the following:

(i) Litigation related to the loan;

(ii) Management control of the lender or the Title I loan portfolio was assumed by a Federal or State agency; or

(iii) The borrower had experienced a loss of income or other financial difficulties directly attributable to a major disaster declared by the President, and additional time was needed to provide forbearance on a property improvement loan.

* * * * *

24. Section 201.55 is amended by revising the introductory text of paragraph (a), the introductory text of paragraph (b), and paragraphs (b)(3) and (b)(7), to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(a) *Property improvement loans.* For property improvement loans, the insurance claim payment shall be 90 percent of the following amounts:

* * * * *

(b) *Manufactured home loans.* For manufactured home loans, the insurance claim payment shall be 90 percent of the sum of the following amounts:

* * * * *

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes, and site rental, as appropriate), plus actual costs not to exceed $1,000 per module for removing and transporting the home to a dealer's lot or other off-site location.

* * * * *

(7) The amount of attorney's fees on an hourly or other basis for time actually expended and billed, not to exceed $1,000.

* * * * *

Dated: January 11, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–10885 Filed 5–01–96; 8:45 am]

BILLING CODE 4210–27–P