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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.

[61 FR 14414, Apr. 1, 1996]

§ 200.41 Maximum mortgagee fees and charges.

(a) Mortgagee fees and charges included in the mortgage must be for actual required services provided to the mortgagor by the mortgagee, and shall not exceed common market rates for such services as determined by the Commissioner.

(b) Mortgagee charges for prepayment of the mortgage and late mortgage payments shall not exceed that determined appropriate by the Commissioner.

COMMITMENT APPLICATIONS

§ 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)

[61 FR 14415, Apr. 1, 1996]

§ 200.46 Commitment issuance.

Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured. The commitment term and any extension or reopening of an expired commitment shall be in accordance with standards established by the Commissioner.

§ 200.47 Firm commitments.

A valid firm commitment must be in effect at the time the mortgage instrument is endorsed.

(a) *Insurance upon completion.* The commitment shall provide the terms and conditions for the insurance of the mortgage:

(1) After completion of construction or substantial rehabilitation of the project; or

(2) Upon completion of required work, except as deferred by the Commissioner in accordance with terms, conditions and standards established by the Commissioner, for an existing project without substantial rehabilitation.

(b) *Insured advances.* The commitment shall provide for insurance of the mortgage as provided in paragraph (a) of this section, and for the insurance of mortgage money advanced in accordance with terms and conditions established by the Commissioner during: construction; substantial rehabilitation; or other work acceptable to the Commissioner.

REQUIREMENTS INCIDENT TO INSURED ADVANCES

§ 200.50 Building loan agreement.

The mortgagor and mortgagee must execute a building loan agreement approved by the Commissioner, that sets forth the terms and conditions under which progress payments may be advanced during construction, before initial endorsement of the mortgage for insurance.

§ 200.51 Mortgagee certificate.

The mortgagee shall certify to the Commissioner that it will conform with terms and conditions established by the Commissioner for the mortgagee's control of project funds, and other incidental requirements established by the Commissioner.

§ 200.52 Construction contract.

The form of contract between the mortgagor and builder shall be as prescribed by the Commissioner in accordance with terms and conditions established by the Commissioner.

§ 200.53 Initial operating funds.

The mortgagor shall deposit cash with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, in accordance with terms, conditions and standards established by the Commissioner for:

(a) Accruals for taxes, ground rates, mortgage insurance premiums, and property insurance premiums, during the course of construction;