

under this subpart to be eligible for insurance, the Commissioner shall determine that the title to the property is vested in the borrower as of the date the security instrument is filed for record. The title evidence will be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to furnish a policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company, and in a form, satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, the policy of title insurance will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

(b) The abstract of title shall be satisfactory to the Commissioner, prepared by an abstract title company or an individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

[39 FR 28966, Aug. 12, 1974, as amended at 58 FR 34216, June 24, 1993]

FORM OF CONTRACT

§ 232.605 Contract requirements.

(a) The contract between the mortgagor and the general contractor may be in the form of either a lump sum contract or a cost plus contract. Either form of contract shall include the cost of fire safety equipment, its installa-

tion, and such other work to be performed by the contractor as necessary to meet the requirements of the Secretary of Health and Human Services and the Commissioner. A lump sum contract shall provide for the payment of a specified amount. A cost plus contract shall provide for the payment of the contractor's actual cost of compliance with the requirements of the contract, plus such allowance for overhead and profit as may be approved by the Commissioner and shall provide that the total cost under the contract shall not exceed an upset price as approved by the Commissioner.

(b) If agreed to by the general contractor and borrower, a lump sum form of contract between the borrower and the general contractor may be used unless the Commissioner determines that a cost plus contract with a maximum upset price is necessary to protect the interests of the borrower or the Commissioner.

COST CERTIFICATION REQUIREMENTS

§ 232.610 Certification of cost requirements.

(a) *Certificate and adjustment.* No loan shall be insured unless:

(1) A certification of actual cost is made by the contractor in cases in which a cost plus form of contract is used; and

(2) The amount of the loan is adjusted to reflect the actual cost to the borrower of the improvements when either a cost plus or lump sum form of contract is used.

(b) *Cost computation.* The term *actual cost of the improvements* shall mean the cost to the borrower of the improvements, after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including the amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner.

(c) *Statement of facts.* Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner

§ 232.615

and may be relied upon as a true statement of the facts contained therein.

(d) *Incontestability*. Upon the Commissioner's approval of the cost certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(e) *Records*. The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

ELIGIBLE BORROWERS

§ 232.615 Eligible borrowers.

(a) In order to be eligible as a borrower under this subpart the applicant shall be a profit or non-profit entity, which owns a nursing home or intermediate care facility for which the Secretary of Health and Human Services has determined that the installation of fire safety equipment in such facility is necessary to meet the applicable requirements of the Secretary of Health and Human Services for providers of services under Title XVIII and Title XIX of the Social Security Act and that upon completion of the installation of such equipment the nursing home or intermediate care facility will meet not only the applicable fire safety requirements of HHS but will meet other pertinent health and safety requirements of HHS for providers of such services. At the time of application, a nursing home or intermediate care facility need not be providing such services if upon completion of installation such home or facility will meet other pertinent health and safety requirements of HHS for providers of such services. In lieu of a facility being able to meet HHS's requirements for other pertinent health and safety requirements at the time of application, HHS may accept a list of deficiencies from the State Agency responsible for determining compliance with HHS's requirements for other pertinent health and safety requirements for providers of such services along with a plan pre-

24 CFR Ch. II (4-1-11 Edition)

pared by the applicant for correcting those deficiencies. In such event, HHS will inform HUD that, if the facility complies with such plan, the facility will meet the applicable health and safety requirements of HHS for providers of services under Titles XVIII and XIX of the Social Security Act upon the installation of the fire safety equipment. Until the termination of all obligations of the Commissioner under an insurance contract under this subpart and during such further period of time as the Commissioner shall be the owner, holder, or reinsurer of the loan, the borrower shall be regulated or restricted by the Commissioner as to methods of operation including requirements for maintenance of fire safety equipment.

(b) Also eligible as a borrower shall be a profit or nonprofit entity which owns an assisted living facility or board and care home for which HUD has determined that the installation of fire safety equipment is approvable under the definition contained in § 232.500(c).

[39 FR 28966, Aug. 12, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 50 FR 37523, Sept. 16, 1985; 59 FR 61228, Nov. 29, 1994]

§ 232.616 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control number 2502-0118)

[54 FR 39695, Sept. 27, 1989]

SPECIAL REQUIREMENTS

§ 232.620 Determination of compliance by HHS.

An application under this subpart must be accompanied by a statement from the Secretary of Health and Human Services, or his designee, that the Secretary has determined that the physical plant of the facility, when the fire safety equipment has been installed, will be in compliance with the HHS requirements for fire safety and